California Labor Code 2017

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Labor Code
2017

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Contents

General Provisions 1

Division 1. Department Of Industrial Relations 2

Chapter 1. General Powers and Duties 2
Chapter 1.5. Mediation 6
Chapter 2. Industrial Welfare Commission 6
Chapter 3. Commission on Health and Safety and Workers' Compensation 6
Chapter 4. Division of Labor Standards Enforcement 7
Chapter 4.5. Electrician Certification 16
Chapter 5. Division of Workers' Compensation 19
Chapter 6. Occupational Safety and Health Standards Board 37
Chapter 6.5. Occupational Safety and Health Appeals Board 43
Chapter 7. Labor Statistics and Research 44
Chapter 7.5. Division of Occupational Safety and Health 45

Division 2. Employment Regulation And Supervision 45

Part 1. Compensation 45
Chapter 1. Payment of Wages 45
Article 1. General Occupations 45
Article 1.5. Paid Sick Days 68
Article 2. Seasonal Labor 72
Article 3. Special Occupations 72
Chapter 2. Assignment of Wages 75
Chapter 3. Privileges and Perquisites 75
Article 1. Gratuities 75
Article 2. Bonds and Photographs 76
Article 3. Contracts and Applications for Employment 76
Article 4. Purchases 79
Part 2. Working Hours 79
Chapter 1. General 79
Chapter 2. Railroads 84
Chapter 3. Smelters and Underground Workings 85
Chapter 4. Lumber Industries 86
Chapter 5. Pharmacies 86
Chapter 6. Agriculture 87
Part 3. Privileges And Immunities 88
Chapter 1. Contracts Against Public Policy 88
Chapter 2. Solicitation of Employees by Misrepresentation 88
Chapter 2.5. Employer Use of Social Media 89
Chapter 3. Class of Labor Employed; Labor Union Insignia 89
Chapter 3.1. Unfair Immigration-Related Practices 90
Chapter 3.5. Contractors 91
Chapter 3.6. Employer Use of Consumer Credit Reports 92
Chapter 3.7. Alcohol and Drug Rehabilitation 92
Chapter 3.8. Lactation Accommodation 92
Chapter 3.9. Employee Literacy Assistance 93
Chapter 4. Reemployment Privileges 93
Chapter 4.5. Displaced Janitor Opportunity Act 93
Chapter 4.6. Public Transit Service Contracts and Contracts for the Collection and Transportation of Solid Waste 95
Chapter 5. Political Affiliations 97
Chapter 6. Agreements in Connection With Trade Disputes 98
Chapter 7. Jurisdictional Strikes 98
Chapter 7.5. Collective Bargaining Agreements 98
Chapter 8. Professional Strikebreakers 99
Article 1. Findings and Declarations 99
Article 2. Definitions 99
Article 3. Professional Strikebreakers 100
Article 4. Miscellaneous 100
Chapter 10. Unlawful Acts During Labor Disputes 100

Part 3.5. Agricultural Labor Relations ... 101
Chapter 1. General Provisions and Definitions ... 101
Chapter 2. Agricultural Labor Relations Board ... 102
Article 1. Agricultural Labor Relations Board: Organization ... 102
Article 2. Investigatory Powers ... 103
Chapter 3. Rights of Agricultural Employees ... 104
Chapter 4. Unfair Labor Practices and Regulation of Secondary Boycotts ... 104
Chapter 5. Labor Representatives and Elections ... 107
Chapter 6. Prevention of Unfair Labor Practices and Judicial Review and Enforcement ... 109
Chapter 6.5. Contract Dispute Resolution ... 111
Chapter 7. Suits Involving Employers and Labor Organizations ... 112
Chapter 8. Limitations ... 113
Part 4. Employees ... 113
Chapter 1. Wages, Hours and Working Conditions ... 113
Chapter 2. Occupational Privileges and Restrictions ... 125
Article 2. Minors ... 125
Chapter 3. Working Hours ... 133
Article 2. Minors ... 133
Chapter 4. Relocations, Terminations, and Mass Layoffs ... 135
Part 4.2. Property Service Workers Protection ... 136
Part 4.5. Domestic Work Employees ... 139
Chapter 1. General Provisions and Definitions ... 139
Chapter 2. Domestic Work Employee Rights ... 140
Part 5. Civil Air Patrol ... 140
Part 5.5. Organ And Bone Marrow Donation ... 141
Part 6. Licensing ... 141
Chapter 3. Farm Labor Contractors ... 141
Chapter 4. Talent Agencies ... 150
Article 1. Scope and Definitions ... 150
Article 2. Licenses ... 151
Article 3. Operation and Management ... 152
Chapter 4.5. Fee-Related Talent Services ... 155
Article 1. Definitions ... 155
Article 2. Advance-Fee Talent Representation Service ... 156
Article 3. Other Talent Services ... 156
Article 4. Remedies ... 160
Article 5. General Provisions ... 160
Chapter 5. Child Performer Services Permits ... 160
Part 7. Public Works And Public Agencies ... 162
Chapter 1. Public Works ... 162
Article 1. Scope and Operation ... 162
Article 1.5. Right of Action ... 168
Article 2. Wages ... 168
Article 3. Working Hours ... 181
Article 5. Securing Workers' Compensation ... 182
Chapter 2. Public Agencies ... 182
Article 1. Municipal Employees ... 182
Chapter 4. Firefighters ... 182
Part 8. Unemployment Relief ... 183
Chapter 1. Extension of Public Works ... 183
Part 8.5. Car Washes ... 183
Chapter 1. General Provisions ... 183
Chapter 2. Registration ... 184
Chapter 3. Successorship ... 185
Chapter 4. Operation ... 186
Chapter 5. Reporting ... 186
Part 9. Health ... 186
Chapter 1. Sanitary Conditions ... 186
Article 1. Sanitary Standards ... 186
Article 2. Foundries and Metal Shops ... 186
Article 3. Factories and Business Establishments ... 186
Article 5. General Health Provisions ... 186

Part 9.5. Grocery Workers ... 187
Part 10. Industrial Homework ... 188
Part 11. Garment Manufacturing ... 191
Chapter 1. General Provisions ... 191
Chapter 2. Registration ... 193
Chapter 3. Arbitration ... 197
Part 12. Sheepherders ... 197
Part 13. The Labor Code Private Attorneys General Act Of 2004 ... 199
Division 3. Employment Relations ... 203
Chapter 1. Scope of Division ... 203
Chapter 2. Employer and Employee ... 203
Article 1. The Contract of Employment ... 203
Article 2. Obligations of Employer ... 206
Article 2.5. Electronic Employment Verification Systems ... 211
Article 3. Obligations of Employee ... 211
Article 3.5. Inventions Made by an Employee ... 212
Article 4. Termination of Employment ... 213
Article 5. Investigations of Employees ... 213
Chapter 4. Apprenticeship ... 214
Division 4. Workers' Compensation And Insurance ... 220
Part 1. Scope And Operation ... 220
Chapter 1. General Provisions ... 220
Chapter 2. Employers, Employees, and Dependents ... 232
Article 1. Employers ... 232
Article 2. Employees ... 232
Article 3. Dependents ... 237
Article 4. Employee Notice ... 237
Chapter 3. Conditions of Compensation Liability ... 238
Chapter 4. Compensation Insurance and Security ... 242
Article 1. Insurance and Security ... 242
Article 2. Uninsured Employers Fund ... 250
Article 2.5. Self-Insurers' Security Fund ... 258
Article 3. Insurance Rights and Privileges ... 259
Article 4. Construction Permit ... 261
Article 5. Workers' Compensation Misrepresentations ... 261
Chapter 5. Subrogation of Employer ... 262
Chapter 7. Medical Examinations ... 264
Article 2. Determination of Medical Issues ... 264
Chapter 8. Election to Be Subject to Compensation Liability ... 268
Chapter 9. Economic Opportunity Programs ... 269
Article 1. General Provisions ... 269
Article 2. Benefits ... 269
Article 3. Adjustment of Claims ... 270
Chapter 10. Disaster Service Workers ... 270
Chapter 11. Asbestos Workers' Account ... 271
Article 1. General Provisions ... 271
Article 2. Benefits ... 271
Article 3. Collections ... 272
Part 2. Computation Of Compensation ... 273
Chapter 1. Average Earnings ... 273
Chapter 2. Compensation Schedules ... 275
Article 1. General Provisions ... 275
Article 2. Medical and Hospital Treatment ... 277
Article 2.3. Medical Provider Networks ... 300
Article 2.5. Medical-Legal Expenses ... 304
Article 3. Disability Payments ... 306
Article 4. Death Benefits ... 313
Article 4.5. Public Official Death Benefits ... 316
Article 5. Subsequent Injuries Payments ... 317
Article 6. Special Payments to Certain Persons ... 318
Article 7. City Police and Firemen, Sheriffs, and Others ... 320

Part 3. Compensation Claims ... 322
Chapter 1. Payment and Assignment ... 322
Chapter 2. Compromise and Release ... 328
Chapter 3. Lump Sum Payments ... 329
Part 3.5. Arbitration ... 330
Part 4. Compensation Proceedings ... 331
Chapter 1. Jurisdiction ... 331
Chapter 2. Limitations of Proceedings ... 338
Chapter 2.3. Workers' Compensation—Truth in Advertising ... 341
Chapter 2.5. Administrative Assistance ... 342
Chapter 3. Applications and Answers ... 342
Chapter 4. Attachments ... 346
Chapter 5. Hearings ... 346
Chapter 6. Findings and Awards ... 348
Chapter 7. Reconsideration and Judicial Review ... 350
Article 1. Reconsideration ... 350
Article 2. Judicial Review ... 351
Article 3. Undertaking on Stay Order ... 352

Division 4.5. Workers' Compensation And Insurance: State Employees Not Otherwise Covered ... 352
Chapter 1. General Provisions ... 352
Chapter 2. Direct Payments ... 353
Chapter 3. Insurance ... 353
Chapter 4. Benefits and Procedure ... 353

Division 4.7. Retraining And Rehabilitation ... 354

Division 5. Safety In Employment ... 354
Part 1. Occupational Safety And Health ... 354
Chapter 1. Jurisdiction and Duties ... 354
Chapter 2. Education and Research ... 363
Chapter 2.5. Hazardous Substances Information and Training ... 365
Article 1. General Provisions ... 365
Article 2. Definitions ... 366
Article 3. Hazardous Substances ... 366
Article 4. Duties ... 368
Article 5. Liability and Remedies ... 370
Chapter 3. Responsibilities and Duties of Employers and Employees ... 370
Chapter 4. Penalties ... 377
Chapter 5. Temporary Variances ... 380
Chapter 6. Permit Requirements ... 380
Chapter 7. Appeal Proceedings ... 383
Chapter 8. Enforcement of Civil Penalties ... 386
Chapter 9. Miscellaneous Safety Provisions ... 386
Part 2. Safeguards On Railroads ... 389
Chapter 1. Jurisdiction ... 389
Chapter 2. Operation Personnel ... 389
Chapter 3. Safety Devices ... 391
Chapter 4. Trains ... 391
Part 3. Safety On Buildings ... 391
Chapter 1. Buildings Under Construction or Repair ... 391
Article 1. Floors and Walls ... 391
Article 2. Scaffolding ... 392
Article 3. Construction Elevators ... 392
Article 4. Structural Steel Framed Buildings ... 393
Chapter 2. Elevators, Escalators, Platform and Stairway Chair Lifts, Dumbwaiters, Moving Walks, Automated People Movers, and Other Conveyances ... 394
Chapter 3. Safety Devices Upon Buildings to Safeguard Window Cleaners ... 401
Chapter 4. Passenger Tramways ... 401
Chapter 5. Cranes ... 403
Article 1. Permits for Tower Cranes ... 403
Article 2. Certification ... 404

Part 4. Mining Industries 405
Chapter 3. Underground Telephones 405
Part 5. Ships And Vessels 405
Part 6. Tanks And Boilers 406
Chapter 1. Scope of Chapter and General Provisions 406
Chapter 2. Administration 406
Chapter 3. Operation of Tanks and Boilers 406
Chapter 4. Inspection Fees 407
Chapter 5. Offenses 408
Chapter 6. Mismanagement of Steam Boilers 408
Part 7. Volatile Flammable Liquids 408
Part 7.5. Refinery And Chemical Plants 409
Chapter 1. General 409
Chapter 2. Process Safety Management Standards 409
Part 8. Amusement Rides Safety Law 412
Part 8.1. Permanent Amusement Ride Safety Inspection Program 414
Part 9. Tunnel And Mine Safety 416
Chapter 1. Tunnels and Mines 416
Chapter 2. Gassy and Extrahazardous Tunnels 417
Chapter 3. Licensing and Penalties 419
Part 10. Use Of Carcinogens 420
Chapter 1. General Provisions and Definitions 420
Chapter 2. Exemptions 420
Chapter 3. Standards and Administration 420
Chapter 4. Reporting 422
Chapter 5. Medical Examinations 422
Chapter 6. Inspections 422
Chapter 7. Penalties 422
Part 11. Commercial Establishments 423
Chapter 1. Working Warehouses 423

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General Provisions

(General Provisions enacted by Stats. 1937, Ch. 90.)

1. This act shall be known as the Labor Code.

(Enacted By Stats. 1937, Ch. 90.)

2. The provisions of this code, in so far as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

(Enacted by Stats. 1937, Ch. 90.)

3. All persons who, at the time this code goes into effect, hold office under any of the acts repealed by this code, which offices are continued by this code, continue to hold the same according to the former tenure thereof.

(Enacted by Stats. 1937, Ch. 90.)

4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.

(Enacted by Stats. 1937, Ch. 90.)

5. Unless the context otherwise requires, the general provisions hereinafter set forth shall govern the construction of this code.

(Enacted by Stats. 1937, Ch. 90.)

6. Division, part, chapter, article, and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of any division, part, chapter, article, or section hereof.

(Enacted by Stats. 1937, Ch. 90.)

7. Whenever, by the provisions of this code, an administrative power is granted to a public officer or a duty imposed upon such an officer, the power may be exercised or the duty performed by a deputy of the officer or by a person authorized pursuant to law.

(Enacted by Stats. 1937, Ch. 90.)

8. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required by this code, it shall be made in writing.

Wherever any notice or other communication is required by this code to be mailed by registered mail by or to any person or corporation, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

(Amended by Stats. 1984, Ch. 1089, Sec. 1.)

9. Whenever any reference is made to any portion of this code or of any other law of this State, such reference shall apply to all amendments and additions thereto now or hereafter made.

(Enacted by Stats. 1937, Ch. 90.)

10. "Section" means a section of this code unless some other statute is specifically mentioned.

(Enacted by Stats. 1937, Ch. 90.)

11. The present tense includes the past and future tenses; and the future, the present.

(Enacted by Stats. 1937, Ch. 90.)

12. The masculine gender includes the feminine and neuter.

(Enacted by Stats. 1937, Ch. 90.)

12.1. The Legislature hereby declares its intent that the terms "man" or "men" where appropriate shall be deemed "person" or "persons" and any references to the terms "man" or "men" in sections of this code be changed to "person" or "persons" when such code sections are being amended for any purpose. This section is declaratory and not amendatory of existing law.

(Added by Stats. 1976, Ch. 1171.)

12.2. "Spouse" includes "registered domestic partner," as required by Section 297.5 of the Family Code.

(Added by Stats. 2016, Ch. 50, Sec. 62. Effective January 1, 2017.)

13. The singular number includes the plural, and the plural the singular.

(Enacted by Stats. 1937, Ch. 90.)

14. "County" includes "city and county."

(Enacted by Stats. 1937, Ch. 90.)

15. "Shall" is mandatory and "may" is permissive.

(Enacted by Stats. 1937, Ch. 90.)

16. "Oath" includes affirmation.

(Enacted by Stats. 1937, Ch. 90.)

17. "Signature" or "subscription" includes mark when the signer or subscriber can not write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

(Enacted by Stats. 1937, Ch. 90.)

18. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation.

(Amended by Stats. 1994, Ch. 1010, Sec. 178. Effective January 1, 1995.)

18.5. "Agency" means the Labor and Workforce Development Agency.

(Added by Stats. 2002, Ch. 859, Sec. 9. Effective January 1, 2003.)

19. "Department" means Department of Industrial Relations.

(Enacted by Stats. 1937, Ch. 90.)

19.5. "Secretary" means the Secretary of Labor and Workforce Development.

(Added by Stats. 2002, Ch. 859, Sec. 10. Effective January 1, 2003.)

20. "Director" means Director of Industrial Relations.

(Enacted by Stats. 1937, Ch. 90.)

21. "Labor Commissioner" means Chief of the Division of Labor Standards Enforcement.

(Amended by Stats. 1976, Ch. 746.)

22. "Violation" includes a failure to comply with any requirement of the code.

(Enacted by Stats. 1937, Ch. 90.)

23. Except in cases where a different punishment is prescribed, every offense declared by this code to be a misdemeanor is punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 187. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

24. If any provision of this code, or the application thereof to any person or circumstances, is held invalid the remainder of the code, and the application of its provisions to other persons or circumstances, shall not be affected thereby.

(Enacted by Stats. 1937, Ch. 90.)

25. "Sheriff" includes "marshal."

(Amended by Stats. 1996, Ch. 872, Sec. 102. Effective January 1, 1997.)

26. Notwithstanding any other provision of this code, no person who has not previously obtained a license regulated by this code shall be denied a license solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the

Penal Code, and if his probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(Added by Stats. 1976, Ch. 947.)

27. Whenever the term "workers' compensation judge" or "workers' compensation referee" is used in this code in connection with the workers' compensation law, the term shall mean "workers' compensation administrative law judge."

(Amended by Stats. 1998, Ch. 448, Sec. 1. Effective January 1, 1999.)

28. For injuries occurring on and after January 1, 1991, whenever the term "independent medical examiner" is used in this code, the term shall mean "qualified medical evaluator."

(Amended by Stats. 1990, Ch. 1550, Sec. 5.)

29. "Medical director" means the physician appointed by the administrative director pursuant to Section 122.

(Amended by Stats. 2003, Ch. 639, Sec. 2. Effective January 1, 2004.)

29.5. The Governor shall annually issue a proclamation declaring April 28 as Workers' Memorial Day in remembrance of the courage and integrity of American workers, and recommending that the day be observed in an appropriate manner.

(Added by Stats. 1992, Ch. 571, Sec. 2. Effective January 1, 1993.)

Division 1. Department Of Industrial Relations

(Division 1 enacted by Stats. 1937, Ch. 90.)

Chapter 1. General Powers and Duties

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

50. There is in the Labor and Workforce Development Agency the Department of Industrial Relations.

(Amended by Stats. 2002, Ch. 859, Sec. 11. Effective January 1, 2003.)

50.5. One of the functions of the Department of Industrial Relations is to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment.

(Added by Stats. 1939, Ch. 276.)

50.6. The Department of Industrial Relations may assist and cooperate with the Wage and Hour Division, and the Children's Bureau, United States Department of Labor, in the enforcement within this State of the Fair Labor Standards Act of 1938, and, subject to the regulations of the Administrator of the Wage and Hour Division, or the Chief of the Children's Bureau, and subject to the laws of the State applicable to the receipt and expenditures of money, may be reimbursed by the division or the bureau for the reasonable cost of such assistance and cooperation.

(Added by Stats. 1953, Ch. 31.)

50.7. (a) The Department of Industrial Relations is the state agency designated to be responsible for administering the state plan for the development and enforcement of occupational safety and health standards relating to issues covered by corresponding standards promulgated under the federal Occupational Safety and Health Act of 1970 (Public Law 91-596). The state plan shall be consistent with the provisions of state law governing occupational safety and health, including, but not limited to, Chapter 6 (commencing with Section 140) and Chapter 6.5 (commencing with Section 148) of Division 1, and Division 5 (commencing with Section 6300), of this code.

(b) The budget and budget bill submitted pursuant to Article IV, Section 12 of the California Constitution shall include in the item for the support of the Department of Industrial Relations amounts sufficient to fully carry out the purposes and provisions of the state plan and this code in a manner which assures that the risk of industrial injury, exposure to toxic substances, illness and death to employees will be minimized.

(c) Because Federal grants are available, maximum Federal funding shall be sought and, to the extent possible, the cost of administering the state plan shall be paid by funds obtained from federal grants.

(d) The Governor and the Department of Industrial Relations shall take all steps necessary to prevent withdrawal of approval for the state plan by the Federal government. If Federal approval of the state plan has been withdrawn before passage of this initiative, or if it is withdrawn at any time after passage of this initiative, the Governor shall submit a new state plan immediately so that California shall be approved and shall continue to have access to Federal funds.

(Amended November 8, 1988, by initiative Proposition 97. Note: Prop. 97 is titled the California Occupational Safety and Health Restoration Act.)

50.8. The department shall develop a long range program for upgrading and expanding the resources of the State of California in the area of occupational health and medicine. The program shall include a contractual agreement with the University of California for the creation of occupational health centers affiliated with regional schools of medicine and public health. One such occupational health center shall be situated in the northern part of the state and one in the southern part. The primary function of these occupational health centers shall be the training of occupational physicians and nurses, toxicologists, epidemiologists, and industrial hygienists. In addition, the centers shall serve as referral centers for occupational illnesses and shall engage in research on the causes, diagnosis, and prevention of occupational illnesses.

The centers shall also inform the Division of Occupational Safety and Health Administration of the Department of Industrial Relations, State Department of Health Services, and the Department of Food and Agriculture of their clinical and research findings.

(Added by Stats. 1978, Ch. 1245. Note: See changes set forth in Governor's Reorg. Plan 1 of 1991.)

50.9. In furtherance of the provisions of Section 50.5, the director, or the Director of Employment Development, may comment on the impact of actions or projects proposed by public agencies on opportunities for profitable employment, and such agencies shall consider such comments in their decisions.

(Added by Stats. 1979, Ch. 880.)

51. The department shall be conducted under the control of an executive officer known as Director of Industrial Relations. The Director of Industrial Relations shall be appointed by the Governor with the advice and consent of the Senate and hold office at the pleasure of the Governor and shall receive an annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1983, Ch. 142, Sec. 97.)

52. Except as otherwise prescribed in this code, the provisions of the Government Code relating to departments of the State shall govern and apply to the conduct of the department.

(Amended by Stats. 1949, Ch. 211.)

53. Whenever in Section 1001 or in Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code "head of the department" or similar designation occurs, the same shall, for the purposes of this code, mean the director, except that in respect to matters which by the express provisions

of this code are committed to or retained under the jurisdiction of the Division of Workers' Compensation, the State Compensation Insurance Fund, the Occupational Safety and Health Standards Board, the Occupational Safety and Health Appeals Board, or the Industrial Welfare Commission the designation shall mean the Division of Workers' Compensation, the Administrative Director of the Division of Workers' Compensation, the Workers' Compensation Appeals Board, the State Compensation Insurance Fund, the Occupational Safety and Health Standards Board, the Occupational Safety and Health Appeals Board, or the Industrial Welfare Commission, as the case may be.

(Amended by Stats. 1994, Ch. 1097, Sec. 2. Effective January 1, 1995.)

54. The director shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the department, except as otherwise expressly provided by this code.

(Enacted by Stats. 1937, Ch. 90.)

54.5. The director may appoint an attorney and assistants licensed to practice law in this state. In the absence of an appointment, the attorney for the Division of Workers' Compensation shall also perform legal services for the department as the Director of Industrial Relations may direct.

(Amended by Stats. 1994, Ch. 1097, Sec. 3. Effective January 1, 1995.)

55. For the purpose of administration the director shall organize the department subject to the approval of the Governor, in the manner he deems necessary properly to segregate and conduct the work of the department. Notwithstanding any provision in this code to the contrary, the director may require any division in the department to assist in the enforcement of any or all laws within the jurisdiction of the department. Except as provided in Section 18930 of the Health and Safety Code, the director may, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code, make rules and regulations that are reasonably necessary to carry out the provisions of this chapter and to effectuate its purposes. The provisions of this section, however, shall not apply to the Division of Workers' Compensation or the State Compensation Insurance Fund, except as to any power or jurisdiction within those divisions as may have been specifically conferred upon the director by law.

(Amended by Stats. 1994, Ch. 1097, Sec. 4. Effective January 1, 1995.)

56. The work of the department shall be divided into at least five divisions known as the Division of Workers' Compensation, the Division of Occupational Safety and Health, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, and the State Compensation Insurance Fund.

(Amended by Stats. 2012, Ch. 46, Sec. 77. Effective June 27, 2012.)

57. Each division shall be in charge of a chief who shall be appointed by the Governor and shall receive a salary fixed in accordance with law, and shall serve at the pleasure of the director.

(Amended by Stats. 1973, Ch. 993.)

57.1. (a) The Chief of the Division of Occupational Safety and Health shall receive an annual salary as provided by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) All officers or employees of the Division of Occupational Safety and Health employed after the operative date of this section shall be appointed by the director in accordance with the provisions of the State Civil Service Act. Notwithstanding the foregoing, two deputy chiefs of the Division of Occupational Safety and Health shall be appointed by the Governor, with the advice of the Director of Industrial Relations, to serve at the pleasure of the Director of Industrial Relations. The two deputy chiefs shall be exempt from civil service. The annual salaries of the two exempted deputy chiefs shall be fixed by the Director of Industrial Relations, subject to the approval of the Director of Finance.

(Amended by Stats. 1979, Ch. 72.)

57.5. All duties, powers, and jurisdiction relating to the administration of the State Compensation Insurance Fund shall be vested in the Board of Directors of the State Compensation Insurance Fund.

(Added by Stats. 1945, Ch. 1431.)

58. The department shall have possession and control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property, real or personal, held for the benefit or use of all commissions, divisions, and offices of the department and the title to all such property held for the use and benefit of the State is hereby transferred to the State.

(Enacted by Stats. 1937, Ch. 90.)

59. The department through its appropriate officers shall administer and enforce all laws imposing any duty, power, or function upon the offices or officers of the department.

(Enacted by Stats. 1937, Ch. 90.)

60. Except as otherwise provided, the provisions of Divisions 4 and 4.5 of this code shall be administered and enforced by the Division of Workers' Compensation.

(Amended by Stats. 1994, Ch. 146, Sec. 137. Effective January 1, 1995.)

60.5. (a) The provisions of Part 1 of Division 5 of this code shall be administered and enforced by the department through the Division of Occupational Safety and Health, subject to the direction of the director pursuant to Section 50.7.

(b) The Division of Occupational Safety and Health succeeds to, and is vested with, all of the powers, duties, purposes, responsibilities, and jurisdiction of the Division of Industrial Safety, which is hereby abolished, and any other jurisdiction conferred by law.

(c) All powers, duties, and responsibilities of the Chief of the Division of Industrial Safety are hereby transferred to the Chief of the Division of Occupational Safety and Health.

(d) Any regulation or other action made, prescribed, issued, granted, or performed by the abolished Division of Industrial Safety in the administration of a function transferred pursuant to subdivision (b) shall remain in effect and shall be deemed to be a regulation or action of the Division of Occupational Safety and Health unless and until repealed, modified, or rescinded by such division.

(e) Whenever any reference is made in any law to the abolished Division of Industrial Safety, it shall be deemed to be a reference to, and to mean, the Division of Occupational Safety and Health.

(Amended by Stats. 1979, Ch. 72.)

60.6. All persons serving in the state civil service in the Division of Industrial Safety or in the Occupational Health Branch of the State Department of Health Services, and engaged in the performance of a function transferred to the Division of Occupational Safety and Health shall, in accordance with Section 19370 of the Government Code, remain in the state civil service and are hereby transferred to the Department of Industrial Relations. The status, positions, and rights of such persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act, except as to positions the duties of which are vested in a position that is exempt from civil service.

(Added by Stats. 1979, Ch. 72.)

60.7. The Division of Occupational Safety and Health shall have possession and control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, land, licenses, permits, agreements, contracts, claims, judgments, and other property, real or personal, held for the benefit or use of the Division of Industrial Safety and the Occupational Health Branch of the State Department of Health Services with respect to the functions of those organizations that are transferred to the Division of Occupational Safety and Health.

(Added by Stats. 1979, Ch. 72.)

60.8. The Division of Occupational Safety and Health may expend money appropriated for the administration of the laws the enforcement of which is committed to the division. Such expenditures by the division shall be made in accordance with law in carrying out the purposes for which the appropriations were made.

(Added by Stats. 1979, Ch. 72.)

60.9. There is within the Division of Occupational Safety and Health an occupational health unit and an occupational safety unit, which shall assist in the performance of occupational health functions and occupational safety functions, respectively, assigned to the division by law. There is also within the occupational health unit an occupational carcinogen control unit responsible for implementing the division's obligations pursuant to the Occupational Carcinogens Control Act of 1976 (Part 10 (commencing with Sec. 9000)). The division, in performing its responsibilities under this code, shall provide for laboratory services and service personnel with respect to occupational health matters by interagency agreement with the State Department of Health Services or another public entity, by contract with a private sector laboratory, or by establishment of a laboratory within the division, or by a combination thereof. In the event that the division contracts with the private sector for laboratory services, the division shall enter into an interagency agreement with the State Department of Health Services for quality control and performance evaluation of the contract laboratory as well as analysis of nonroutine laboratory samples.

(Amended by Stats. 1989, Ch. 299, Sec. 1.)

61. The provisions of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 shall be administered and enforced by the department through the Division of Labor Standards Enforcement.

(Amended by Stats. 1976, Ch. 746.)

62. The department may expend money appropriated for the administration of the provisions of the laws, the enforcement of which is committed to the department. The department may expend such money for the use, support, or maintenance of any commission or office of the department. Such expenditures by the department shall be made in accordance with law in carrying on the work for which such appropriations were made.

(Enacted by Stats. 1937, Ch. 90.)

62.5. (a) (1) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for all of the following purposes, and may not be used or borrowed for any other purpose:

(A) For the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to paragraph (2) of subdivision (a) of Section 3702.5.

(B) For the Return-to-Work Program set forth in Section 139.48.

(C) For the enforcement of the insurance coverage program established and maintained by the Labor Commissioner pursuant to Section 90.3.

(2) The fund shall consist of surcharges made pursuant to paragraph (1) of subdivision (f).

(b) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(4) Any moneys from penalties collected pursuant to Section 3722 as a result of the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Workers' Compensation Administration Revolving Fund created under this section, to cover expenses incurred by the director under the insurance coverage program. The amount of any penalties in excess of payment of administrative expenses incurred by the director for the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund for nonadministrative expenses, as prescribed in paragraph (1), and notwithstanding paragraph (1), shall only be available upon appropriation by the Legislature.

(c) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4751) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of

Section 4755. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(d) (1) The Occupational Safety and Health Fund is hereby created as a special account in the State Treasury. Moneys in the account may be expended by the department, upon appropriation by the Legislature, for support of the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board, and the Occupational Safety and Health Appeals Board, and the activities these entities perform as set forth in this division, and Division 5 (commencing with Section 6300).

(2) On and after the effective date of the act amending this section to add this paragraph in the 2013–14 Regular Session of the Legislature, any moneys in the Cal-OSHA Targeted Inspection and Consultation Fund and any assets, liabilities, revenues, expenditures, and encumbrances of that fund, less five million dollars ($5,000,000), shall be transferred to the Occupational Safety and Health Fund. On June 30, 2014, the remaining five million dollars ($5,000,000) in the Cal-OSHA Targeted Inspection and Consultation Fund, or any remaining balance in that fund, shall be transferred to, and become part of, the Occupational Safety and Health Fund.

(e) The Labor Enforcement and Compliance Fund is hereby created as a special account in the State Treasury. Moneys in the fund may be expended by the department, upon appropriation by the Legislature, for the support of the activities that the Division of Labor Standards Enforcement performs pursuant to this division and Division 2 (commencing with Section 200), Division 3 (commencing with Section 2700), and Division 4 (commencing with Section 3200). The fund shall consist of surcharges imposed pursuant to paragraph (3) of subdivision (f).

(f) (1) Separate surcharges shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Subsequent Injuries Benefits Trust Fund, and the Occupational Safety and Health Fund. The total amount of the surcharges shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. The regulations shall require the surcharges to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the surcharges to be paid by insured employers to be expressed as a percentage of premium. In no event shall the surcharges paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission. In no event shall the total amount of the surcharges paid by insured and self-insured employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(2) The surcharge levied by the director for the Occupational Safety and Health Fund, pursuant to paragraph (1), shall not generate revenues in excess of fifty-seven million dollars ($57,000,000) on and after the 2013–14 fiscal year, adjusted for each fiscal year as appropriate to fund any increases in the appropriation as approved by the Legislature, and to reconcile any over/under assessments from previous fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the California Code of Regulations. For the 2013–14 fiscal year only, the revenue cap established in this paragraph shall be reduced by an amount equivalent to the balance transferred from the Cal-OSHA Targeted Inspection and Consultation Fund established in Section 62.7, less any amount of that balance loaned to the State Public Works Enforcement Fund, to the Occupational Safety and Health Fund pursuant to subdivision (d).

(3) A separate surcharge shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Labor Enforcement and Compliance Fund. The total amount of the surcharges shall be allocated between employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. In no event shall the total amount of the surcharges paid by employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(4) The surcharge levied by the director for the Labor Enforcement and Compliance Fund shall not exceed forty-six million dollars ($46,000,000) in the 2013–14 fiscal year, adjusted as appropriate to fund any increases in the appropriation as approved by the Legislature, and to reconcile any over/under assessments from previous fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the California Code of Regulations.

(5) The regulations adopted pursuant to paragraph (1) to (4), inclusive, shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(Amended by Stats. 2013, Ch. 28, Sec. 33. Effective June 27, 2013.)

62.6. (a) The director shall levy and collect assessments from employers in accordance with subdivision (b), as necessary, to collect the aggregate amount determined by the Fraud Assessment Commission pursuant to Section 1872.83 of the Insurance Code. Revenues derived from the assessments shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund and shall only be expended, upon appropriation by the Legislature, for the investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation, as prescribed by Section 1872.83 of the Insurance Code.

(b) Assessments shall be levied by the director upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules and regulations shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessment paid

by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(Amended by Stats. 2002, Ch. 6, Sec. 18. Effective January 1, 2003.)

62.8. Five million dollars ($5,000,000) is hereby appropriated for transfer by the State Controller upon order of the Director of Finance from the Cal-OSHA Targeted Inspection and Consultation Fund as a loan to the State Public Works Enforcement Fund. This loan shall be repaid to the Occupational Safety and Health Fund by June 30, 2015. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer.

(Added by Stats. 2013, Ch. 28, Sec. 35. Effective June 27, 2013.)

63. The Director may authorize the refund of moneys received or collected by the department in payment of license fees or for other services in cases where the license can not lawfully be issued or the service rendered to the applicant.

(Added by Stats. 1941, Ch. 947.)

64. The Labor Commissioner may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act for and on behalf of that department or agency, for the collection in that other state of claims or judgments for wages and other demands based upon claims previously assigned to the Division of Labor Standards Enforcement.

(Amended by Stats. 1988, Ch. 96, Sec. 1.)

64.5. When requested by the State Board of Equalization, the department may permit any duly authorized representative of that agency to transmit to the State Board of Equalization information available in the department's records that indicates a retail establishment is operating without a seller's permit required by the State Board of Equalization, to assist the State Board of Equalization in determining compliance with the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code).

(Added by Stats. 2008, Ch. 306, Sec. 1. Effective January 1, 2009.)

Chapter 1.5. Mediation

(Chapter 1.5 added by Stats. 1939, Ch. 810.)

66. The services of the department pursuant to Section 65 shall be conducted by a unit within the department to be known as the California State Mediation and Conciliation Service.

(Added by Stats. 1978, Ch. 133.)

67. (a) Notwithstanding any other law, the director may seek and collect reimbursement from private and public sector employers, labor unions, and employee organizations for election, arbitration, and training and facilitation services provided by the California State Mediation and Conciliation Service pursuant to Section 65 and for representation services, including the provision of hearing officers, related to public transit labor relations provided by the California State Mediation and Conciliation Service pursuant to the Public Utilities Code.

(b) The director shall adopt regulations implementing this section.

(Added by Stats. 2009, 4th Ex. Sess., Ch. 12, Sec. 24. Effective July 28, 2009.)

Chapter 2. Industrial Welfare Commission

(Heading of Chapter 2 amended by Stats. 1976, Ch. 746.)

70. There is in the Department of Industrial Relations the Industrial Welfare Commission which consists of five members. The members of the commission shall be appointed by the Governor, with the consent of the Senate.

(Amended by Stats. 1980, Ch. 1083.)

70.1. The Industrial Welfare Commission shall be composed of two representatives of organized labor who are members of recognized labor organizations, two representatives of employers, and one representative of the general public. The membership shall include members of both sexes.

(Amended by Stats. 1990, Ch. 513, Sec. 1.)

71. The term of office of the members of the Industrial Welfare Commission shall be four years and they shall hold office until the appointment and qualification of their successors. The terms of the members of the commission in office at the time this code takes effect shall expire on January 15th of that year which for the particular member has heretofore been determined. Vacancies shall be filled by appointment for the unexpired terms.

(Enacted by Stats. 1937, Ch. 90.)

72. The members of the commission shall receive one hundred dollars ($100) for each day's actual attendance at meetings and other official business of the commission and shall receive their actual and necessary expenses incurred in the performance of their duties.

(Amended by Stats. 1980, Ch. 1083.)

73. The Industrial Welfare Commission may employ necessary assistants, officers, experts, and such other employees as it deems necessary. All such personnel of the commission shall be under the supervision of the chairman or an executive officer to whom the chairman delegates such responsibility. All such personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for the one exempt deputy or employee allowed by subdivision (e) of Section 4 of Article VII of the California Constitution.

(Repealed and added by Stats. 1980, Ch. 1083.)

74. The Chief of the Division of Labor Standards Enforcement, for the purpose of enforcing Industrial Welfare Commission orders and provisions of this code, may issue subpoenas to compel the attendance of witnesses and production of books, papers, and records. Obedience to subpoenas issued by the chief of the division shall be enforced by the courts.

The Chief and enforcement deputies of the Division of Labor Standards Enforcement may administer oaths and examine witnesses under oath for the purpose of enforcing Industrial Welfare Commission orders and provisions of this code.

(Amended by Stats. 1976, Ch. 746.)

Chapter 3. Commission on Health and Safety and Workers' Compensation

(Chapter 3 added by Stats. 1993, Ch. 227, Sec. 2.)

75. (a) There is in the department the Commission on Health and Safety and Workers' Compensation. The commission shall be composed of eight voting members. Four voting members shall represent organized labor, and four voting members shall represent employers. Not more than one employer member shall represent public agencies. Two of the employer and two of the labor members shall be appointed by the Governor. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one employer and one labor representative. The public employer representative shall be appointed by the Governor. No action of the commission shall be valid unless agreed to by a majority of the membership and by not less than

two members representing organized labor and two members representing employers.

(b) The commission shall select one of the members representing organized labor to chair the commission during the 1994 calendar year, and thereafter the commission shall alternatively select an employer and organized labor representative to chair the commission for one-year terms.

(c) The initial terms of the members of the commission shall be four years, and they shall hold office until the appointment of a successor. However, the initial terms of one employer and one labor member appointed by the Governor shall expire on December 31, 1995; the initial terms of the members appointed by the Senate Committee on Rules shall expire December 31, 1996; the initial terms of the members appointed by the Speaker of the Assembly shall expire on December 31, 1997; and the initial term of one employer and one labor member appointed by the Governor shall expire on December 31, 1998. Any vacancy shall be filled by appointment to the unexpired term.

(d) The commission shall meet every other month and upon the call of the chair. Meetings shall be open to the public. Members of the commission shall receive one hundred dollars ($100) for each day of their actual attendance at meetings of the commission and other official business of the commission and shall also receive their actual and necessary traveling expenses incurred in the performance of their duty as a member. Payment of per diem and traveling expenses shall be made from the Workers' Compensation Administration Revolving Fund, when appropriated by the Legislature.

(Amended by Stats. 2002, Ch. 6, Sec. 19. Effective January 1, 2003.)

76. The commission may employ officers, assistants, experts, and other employees it deems necessary. All personnel of the commission shall be under the supervision of the chair or an executive officer to whom he or she delegates this responsibility. All personnel shall be appointed pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except for the one exemption allowed by subdivision (e) of Section 4 of Article VII of the California Constitution.

(Added by Stats. 1993, Ch. 227, Sec. 2. Effective January 1, 1994.)

77. (a) The commission shall conduct a continuing examination of the workers' compensation system, as defined in Section 4 of Article XIV of the California Constitution, and of the state's activities to prevent industrial injuries and occupational diseases. The commission may conduct or contract for studies it deems necessary to carry out its responsibilities. In carrying out its duties, the commission shall examine other states' workers' compensation programs and activities to prevent industrial injuries and occupational diseases. All state departments and agencies, and any rating organization licensed by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code, shall cooperate with the commission and upon reasonable request provide information and data in their possession that the commission deems necessary for the purpose of carrying out its responsibilities. The commission shall issue an annual report on the state of the workers' compensation system, including recommendations for administrative or legislative modifications which would improve the operation of the system. The report shall be made available to the Governor, the Legislature, and the public on request.

(b) On or before July 1, 2003, and periodically thereafter as it deems necessary, the commission shall issue a report and recommendations on the improvement and simplification of the notices required to be provided by insurers and self-insured employers.

(c) The commission succeeds to, and is vested with, all of the powers, duties, purposes, responsibilities, and jurisdiction of the Health and Safety Commission which is hereby abolished, including the administration of grants to assist in establishing effective occupational injury and illness prevention programs.

(Amended by Stats. 2002, Ch. 6, Sec. 20. Effective January 1, 2003.)

77.5. (a) On or before July 1, 2004, the commission shall conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level, and in other medical benefit systems. The survey shall be updated periodically.

(b) On or before October 1, 2004, the commission shall issue a report of its findings and recommendations to the administrative director for purposes of the adoption of a medical treatment utilization schedule.

(Added by Stats. 2003, Ch. 639, Sec. 3. Effective January 1, 2004.)

78. (a) The commission shall review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs. The commission shall establish policies for the evaluation of these applications and shall give priority to applications proposing to target high-risk industries and occupations, including those with high injury or illness rates, and those in which employees are exposed to one or more hazardous substances or conditions or where there is a demonstrated need for research to determine effective strategies for the prevention of occupational illnesses or injuries.

(b) Civil and administrative penalties assessed and collected pursuant to Sections 129.5 and 4628 shall be deposited in the Workers' Compensation Administration Revolving Fund. Moneys in the fund, when appropriated by the Legislature to fund the grants under subdivision (a) and other activities and expenses of the commission set forth in this code, shall be expended by the department, upon approval by the commission.

(Amended by Stats. 2002, Ch. 866, Sec. 1. Effective January 1, 2003.)

Chapter 4. Division of Labor Standards Enforcement

(Heading of Chapter 4 amended by Stats. 1976, Ch. 746.)

79. There is in the Department of Industrial Relations the Division of Labor Standards Enforcement. The Division of Labor Standards Enforcement shall be under the direction of an executive officer known as the Chief, Division of Labor Standards Enforcement, who shall be appointed by the Governor, subject to confirmation of the Senate, and shall hold office at the pleasure of the Director of Industrial Relations. The annual salary of the chief shall be determined by the Department of Finance.

(Repealed and added by Stats. 1976, Ch. 746.)

80. The headquarters of the Division of Labor Standards Enforcement, hereafter in this chapter referred to as the division, shall be located in San Francisco.

(Added by Stats. 1976, Ch. 746.)

81. The employees of the division shall devote their full time to the work of the division and shall receive their actual necessary traveling expenses. The division shall maintain offices in San

Francisco, Los Angeles, Sacramento, San Diego, Oakland, Fresno, San Jose, and in such other places as the Labor Commissioner may deem necessary.

(Added by Stats. 1976, Ch. 746.)

82. (a) The Division of Labor Standards Enforcement succeeds to, and is vested with, all of the powers, duties, purposes, responsibilities, and jurisdiction of the Division of Labor Law Enforcement, which is hereby abolished.

(b) All powers, duties, purposes, and responsibilities of the Labor Commissioner, who is Chief of the Division of Labor Law Enforcement, are hereby transferred to the Labor Commissioner who is the Chief of the Division of Labor Standards Enforcement.

(c) Any regulation or other action made, prescribed, issued, granted, or performed by the abolished Division of Labor Law Enforcement in the administration, performance, or implementation of a function transferred pursuant to subdivision (a) of this section shall remain in effect and shall be deemed to be a regulation or action of the Division of Labor Standards Enforcement unless and until repealed, modified, or rescinded by such division.

(d) Whenever any reference is made in any law to the abolished Division of Labor Law Enforcement, it shall be deemed to be a reference to, and to mean, the Division of Labor Standards Enforcement.

(Added by Stats. 1976, Ch. 746.)

83. (a) The Division of Labor Standards Enforcement succeeds to, and is vested with, all of the powers, duties, purposes, responsibilities, and jurisdiction of the Division of Industrial Welfare, which is hereby abolished.

(b) All powers, duties, purposes, and responsibilities of the Chief, Division of Industrial Welfare are hereby transferred to the Chief of the Division of Labor Standards Enforcement.

(c) Any regulation or other action made, prescribed, issued, granted, or performed by the abolished Division of Industrial Welfare in the administration, performance, or implementation of a function transferred pursuant to subdivision (a) of this section shall remain in effect and shall be deemed to be a regulation or action of the Division of Labor Standards Enforcement unless and until repealed, modified, or rescinded by such division.

(d) Whenever any reference is made in any law to the abolished Division of Industrial Welfare it shall be deemed to be a reference to, and to mean, the Division of Labor Standards Enforcement.

(Added by Stats. 1976, Ch. 746.)

87. All persons, other than temporary employees, serving in the state civil service and engaged in the performance of a function transferred pursuant to this chapter, or engaged in the administration of a law, the administration of which is transferred pursuant to this chapter, shall, in accordance with Section 19050.9 of the Government Code, remain in the state civil service and are hereby transferred to the Division of Labor Standards Enforcement. The status, positions, and rights of those persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 5 of the Government Code), except as to positions the duties of which are vested in a position that is exempt from civil service.

(Amended by Stats. 2009, Ch. 140, Sec. 135. Effective January 1, 2010.)

88. The personnel records of all employees transferred pursuant to Section 87 shall remain in the Department of Industrial Relations.

(Added by Stats. 1976, Ch. 746.)

89. The Division of Labor Standards Enforcement shall have possession and control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property, real or personal, held for the benefit or use of the Division of Labor Law Enforcement and the Division of Industrial Welfare with respect to the functions transferred pursuant to this chapter.

(Repealed and added by Stats. 1976, Ch. 746.)

89.5. The Division of Labor Standards Enforcement may expend the money in any appropriation or in any special fund in the State Treasury made available by law for the administration of the statutes the administration of which is committed to it pursuant to this chapter, or for the use, support, or maintenance of any board, bureau, commission, department, office, or officer whose duties, powers, and functions have been transferred to, and conferred upon, the Division of Labor Standards Enforcement pursuant to this chapter. Such expenditures by the Division of Labor Standards Enforcement shall be made in accordance with law in carrying out the purposes for which the appropriations were made or the special funds created.

(Added by Stats. 1976, Ch. 746.)

90. The Labor Commissioner, his deputies and agents, shall have free access to all places of labor. Any person, or agent or officer thereof, who refuses admission to the Labor Commissioner or his deputy or agent or who, upon request, willfully neglects or refuses to furnish them any statistics or information, pertaining to their lawful duties, which are in his possession or under his control, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000).

(Amended by Stats. 1983, Ch. 1092, Sec. 188. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

90.3. (a) It is the policy of this state to vigorously enforce the laws requiring employers to secure the payment of compensation as required by Section 3700 and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to secure the payment of compensation.

(b) In order to ensure that the laws requiring employers to secure the payment of compensation are adequately enforced, the Labor Commissioner shall establish and maintain a program that systematically identifies unlawfully uninsured employers. The Labor Commissioner, in consultation with the Administrative Director of the Division of Workers' Compensation and the director, may prioritize targets for the program in consideration of available resources. The employers shall be identified from data from the Uninsured Employers' Fund, the Employment Development Department, the rating organizations licensed by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code, and any other sources deemed likely to lead to the identification of unlawfully uninsured employers. All state departments and agencies and any rating organization licensed by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code shall cooperate with the Labor Commissioner and on reasonable request provide information and data in their possession reasonably necessary to carry out the program.

(c) As part of the program, the Labor Commissioner shall establish procedures for ensuring that employers with payroll but with no record of workers' compensation coverage are contacted and, if no valid reason for the lack of record of coverage is shown, inspected on a priority basis.

(d) The Labor Commissioner shall annually, not later than March 1, prepare a report concerning the effectiveness of the program, publish it on the Labor Commissioner's Web site, as well as notify the Legislature, the Governor, the Insurance Commissioner, and the Administrative Director of the Division of Workers' Compensation of the report's availability. The report shall include, but not be limited to, all of the following:

(1) The number of employers identified from records of the Employment Development Department who were screened for matching records of insurance coverage or self-insurance.

(2) The number of employers identified from records of the Employment Development Department that were matched to records of insurance coverage or self-insurance.

(3) The number of employers identified from records of the Employment Development Department that were notified that there was no record of their insurance coverage.

(4) The number of employers responding to the notices, and the nature of the responses, including the number of employers who failed to provide satisfactory proof of workers' compensation coverage and including information about the reasons that employers who provided satisfactory proof of coverage were not appropriately recognized in the comparison performed under subdivision (b). The report may include recommendations to improve the accuracy and efficiency of the program in screening for unlawfully uninsured employers.

(5) The number of employers identified as unlawfully uninsured from records of the Uninsured Employers' Benefits Trust Fund or from records of the Division of Workers' Compensation, and the number of those employers that are also identifiable from the records of the Employment Development Department. These statistics shall be reported in a manner to permit analysis and estimation of the percentage of unlawfully uninsured employers that do not report wages to the Employment Development Department.

(6) The number of employers inspected.

(7) The number and amount of penalties assessed pursuant to Section 3722 as a result of the program.

(8) The number and amount of penalties collected pursuant to Section 3722 as a result of the program.

(e) The allocation of funds from the Workers' Compensation Administration Revolving Fund pursuant to subdivision (a) of Section 62.5 shall not increase the total amount of surcharges pursuant to subdivision (e) of Section 62.5. Startup costs for this program shall be allocated from the fiscal year 2007–08 surcharges collected. The total amount allocated for this program under subdivision (a) of Section 62.5 in subsequent years shall not exceed the amount of penalties collected pursuant to Section 3722 as a result of the program.

(Amended by Stats. 2007, Ch. 662, Sec. 2. Effective January 1, 2008.)

90.5. (a) It is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(b) In order to ensure that minimum labor standards are adequately enforced, the Labor Commissioner shall establish and maintain a field enforcement unit, which shall be administratively and physically separate from offices of the division that accept and determine individual employee complaints. The unit shall have offices in Los Angeles, San Francisco, San Jose, San Diego, Sacramento, and any other locations that the Labor Commissioner deems appropriate. The unit shall have primary responsibility for administering and enforcing those statutes and regulations most effectively enforced through field investigations, including Sections 226, 1021, 1021.5, 1193.5, 1193.6, 1194.5, 1197, 1198, 1771, 1776, 1777.5, 2651, 2673, 2675, and 3700, in accordance with the plan adopted by the Labor Commissioner pursuant to subdivision (c). Nothing in this section shall be construed to limit the authority of this unit in enforcing any statute or regulation in the course of its investigations.

(c) The Labor Commissioner shall adopt an enforcement plan for the field enforcement unit. The plan shall identify priorities for investigations to be undertaken by the unit that ensure the available resources will be concentrated in industries, occupations, and areas in which employees are relatively low paid and unskilled, and those in which there has been a history of violations of the statutes cited in subdivision (b), and those with high rates of noncompliance with Section 3700.

(d) The Labor Commissioner shall annually report to the Legislature, not later than March 1, concerning the effectiveness of the field enforcement unit. The report shall include, but not be limited to, all of the following:

(1) The enforcement plan adopted by the Labor Commissioner pursuant to subdivision (c), and the rationale for the priorities identified in the plan.

(2) The number of establishments investigated by the unit, and the number of types of violations found.

(3) The amount of wages found to be unlawfully withheld from workers, and the amount of unpaid wages recovered for workers.

(4) The amount of penalties and unpaid wages transferred to the General Fund as a result of the efforts of the unit.

(Amended by Stats. 2002, Ch. 6, Sec. 23. Effective January 1, 2003.)

90.7. When the division determines that an employer has violated Section 226.2, 1021, 1021.5, 1197, or 1771, or otherwise determines that an employer may have failed to report all the payroll of the employer's employees as required by law, the division shall advise the Insurance Commissioner and request that an audit be ordered pursuant to Section 11736.5 of the Insurance Code.

(Added by Stats. 1987, Ch. 1386, Sec. 2.)

91. Any person who willfully impedes or prevents the Labor Commissioner or his deputies or agents in the performance of duty, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment for not less than seven nor more than 30 days in the county jail, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 189. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

92. The Labor Commissioner, his deputies and agents, may issue subpenas to compel the attendance of witnesses and parties and the production of books, papers and records; administer oaths; examine witnesses under oath; take the verification, acknowledgment, or proof of written instruments; and take depositions and affidavits for the purpose of carrying out the provisions of this code and all laws which the division is to enforce.

(Amended by Stats. 1951, Ch. 960.)

93. Obedience to subpoenas issued by the Labor Commissioner, or his deputies or agents shall be enforced by the courts. It is a misdemeanor to ignore willfully such a subpoena

if it calls for an appearance at a distance from the place of service of 100 miles, or less.

(Amended by Stats. 1976, Ch. 1190.)

94. The office of the division shall be open for business from 9 o'clock a.m. until 5 o'clock p.m. every day except nonjudicial days, and the officers thereof shall give to all persons requesting it all needed information which they may possess.

(Enacted by Stats. 1937, Ch. 90.)

95. (a) The division may enforce the provisions of this code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board or commission. Except as provided in subdivision (d), in the enforcement of such provisions and laws, the director, deputy director, and such officers and employees as the director may designate, shall only have the authority, as public officers, to arrest without a warrant, any person who, in his presence, has violated or as to whom there is probable cause to believe has violated any of such provisions and laws.

In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting officer may, instead of taking such person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.6) of Title 3 of Part 2 of the Penal Code. The provisions of such chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(b) There shall be no civil liability on the part of and no cause of action shall arise against any person, acting pursuant to this section and within the scope of his authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the arresting officer, at the time of such arrest, had reasonable cause to believe was lawful. No such officer shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(c) The director, deputy director, and such officers and employees as the director may designate, may serve all processes and notices throughout the state.

(d) With respect to the enforcement of the provisions of this code and other labor laws as provided in subdivision (a), all officers and employees designated by the Labor Commissioner as investigators, shall have the authority of peace officers to make arrests, and may serve processes and notices as provided in subdivision (c).

(Amended by Stats. 1971, Ch. 701.)

96. The Labor Commissioner and his or her deputies and representatives authorized by him or her in writing shall, upon the filing of a claim therefor by an employee, or an employee representative authorized in writing by an employee, with the Labor Commissioner, take assignments of:

(a) Wage claims and incidental expense accounts and advances.

(b) Mechanics' and other liens of employees.

(c) Claims based on "stop orders" for wages and on bonds for labor.

(d) Claims for damages for misrepresentations of conditions of employment.

(e) Claims for unreturned bond money of employees.

(f) Claims for penalties for nonpayment of wages.

(g) Claims for the return of workers' tools in the illegal possession of another person.

(h) Claims for vacation pay, severance pay, or other compensation supplemental to a wage agreement.

(i) Awards for workers' compensation benefits in which the Workers' Compensation Appeals Board has found that the employer has failed to secure payment of compensation and where the award remains unpaid more than 10 days after having become final.

(j) Claims for loss of wages as the result of discharge from employment for the garnishment of wages.

(k) Claims for loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises.

(Amended by Stats. 1999, Ch. 692, Sec. 2. Effective January 1, 2000.)

96.3. In cases where employees are covered by a collective bargaining agreement, the collective bargaining representative by virtue of such agreement may be the assignee of all such covered employees for purposes of filing claims for wages with the Labor Commissioner, subject to the option of the employee to reject such representation and to represent himself or herself.

(Added by Stats. 1976, Ch. 1029.)

96.5. The Labor Commissioner shall conduct such hearings as may be necessary for the purpose of Section 7071.11 of the Business and Professions Code. In any action to recover upon a cash deposit after a determination made under Section 7071.11, the Labor Commissioner shall certify in writing to the appropriate court that he has heard and determined the validity of claims and demands and that the sum specified therein is the amount found due and payable. The certificate of the commissioner shall be considered by the court but shall not, by itself, be sufficient evidence to support a judgment.

(Added by Stats. 1974, Ch. 201.)

96.6. The Industrial Relations Unpaid Wage Fund is hereby created as a special fund in the State Treasury, which is continuously appropriated for the purposes of subdivision (c) of Section 96.7.

(Added by Stats. 1975, Ch. 714.)

96.7. The Labor Commissioner, after investigation and upon determination that wages or monetary benefits are due and unpaid to any worker in the State of California, may collect such wages or benefits on behalf of the worker without assignment of such wages or benefits to the commissioner.

(a) The Labor Commissioner shall act as trustee of all such collected unpaid wages or benefits, and shall deposit such collected moneys in the Industrial Relations Unpaid Wage Fund.

(b) The Labor Commissioner shall make a diligent search to locate any worker for whom the Labor Commissioner has collected unpaid wages or benefits.

(c) All wages or benefits collected under this section shall be remitted to the worker, his lawful representative, or to any trust or custodial fund established under a plan to provide health and welfare, pension, vacation, retirement, or similar benefits from the Industrial Relations Unpaid Wage Fund.

(d) Any unpaid wages or benefits collected by the Labor Commissioner pursuant to this section shall be retained in the Industrial Relations Unpaid Wage Fund until remitted pursuant to subdivision (c), or until deposited in the General Fund.

(e) The Controller shall, at the end of each fiscal year, transfer to the General Fund the unencumbered balance, less six months of expenditures as determined by the Director of Finance, in the Industrial Relations Unpaid Wage Fund.

(f) All wages or benefits collected under this section which cannot be remitted from the Industrial Relations Unpaid Wage Fund pursuant to subdivision (c) because money has been transmitted to the General Fund shall be paid out of the General Fund from funds appropriated for that purpose.

(Amended by Stats. 2005, Ch. 74, Sec. 54. Effective July 19, 2005.)

96.8. (a) Notwithstanding any other law, beginning 20 days after a judgment is entered by a court of competent jurisdiction in favor of the Labor Commissioner, or in favor of any employee pursuant to subdivision (e) of Section 98.2, the Labor Commissioner may, with the consent of any employee in whose favor the judgment is entered, collect any outstanding amount of the judgment by mailing a notice of levy upon all persons having in their possession, or who will have in their possession or under their control, any credits, money, or property belonging to the judgment debtor, or who owe any debt to the judgment debtor at the time they receive the notice of levy.

(b) Notwithstanding any other law, the Labor Commissioner may execute a levy on any property that may be levied under Section 700.140, 700.150, 700.160, or 700.170 of the Code of Civil Procedure by mailing a notice of levy to the person against whom the levy is directed and serving a copy on the judgment debtor. The notice of levy shall contain all of the information required to be included in a writ of execution under Section 699.520 of the Code of Civil Procedure and in a notice of levy under Section 699.540 of the Code of Civil Procedure.

(c) Any person, upon whom a levy has been noticed having in his or her possession or under his or her control any credits, money, or property belonging to the judgment debtor or owing any debts to the judgment debtor at the time of receipt of the levy or coming into his or her possession or under his or her control within one year of receipt of the notice of levy, shall surrender the credits, money, or property to the Labor Commissioner or pay to the Labor Commissioner the amount of any debt owed to the judgment debtor within 10 days of service of the levy, and shall surrender the credits or property, or the amount of any debt owing to the judgment debtor coming into his or her own possession or control within one year of receipt of the notice of levy within 10 days of the date of coming into possession or control of the credits or property or the amount of any debt owed to the judgment debtor.

(d) Any person who surrenders to the Labor Commissioner pursuant to this section any credits, money, or property, or pays the debts owed to the judgment debtor, shall be discharged from any obligation or liability to the judgment debtor to the extent of the amount paid to the Labor Commissioner as a result of the levy.

(e) If the levy is made on a deposit or credits, money, or property in the possession or under the control of a bank, savings and loan association, or other financial institution as defined by Section 669a(d)(1) of Title 42 of the United States Code, the notice of levy may be delivered or mailed to a centralized location designated by the bank, savings and loan association, or other financial institution pursuant to Section 690.050 of the Code of Civil Procedure.

(f) Any person who is noticed with a levy pursuant to this section and who fails or refuses to surrender any credits, money, or property or pay any debts owed to the judgment debtor shall be liable in his or her own person or estate to the Labor Commissioner in an amount equal to the value of the credits, money, or other property or in the amount of the levy, up to the amount specified in the levy.

(g) The fees, commissions, expenses, and the reasonable costs associated with the sale of property levied upon by warrant or levy pursuant to this section, including, but not limited to, appraisers' fees, auctioneers' fees, and advertising fees are an obligation of the judgment debtor and may be collected from the judgment debtor by virtue of the warrant or levy or in any other manner as though these items were part of the judgment or award outstanding.

(h) This section shall not apply to the judgment debtor's interest in real property.

(i) This section shall not apply if enforcement of the judgment has been stayed on appeal pursuant to Chapter 2 (commencing with Section 916) of Title 13 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2015, Ch. 803, Sec. 2. Effective January 1, 2016.)

97. The Labor Commissioner, his deputies and representatives shall not be bound by any rule requiring the consent of the spouse of a married claimant, the filing of a lien for record before it is assigned, or prohibiting the assignment of a claim for penalty before the claim has been incurred or any other technical rule with reference to the validity of assignments.

(Amended by Stats. 1939, Ch. 1114.)

98. (a) The Labor Commissioner is authorized to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage fixed by an order of the Industrial Welfare Commission or by statute, properly before the division or the Labor Commissioner, including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. The Labor Commissioner may also provide for a hearing to recover civil penalties due pursuant to Section 558 against any employer or other person acting on behalf of an employer, including, but not limited to, an individual liable pursuant to Section 558.1. It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute. A party who has received actual notice of a claim before the Labor Commissioner shall, while the matter is before the Labor Commissioner, notify the Labor Commissioner in writing of any change in that party's business or personal address within 10 days after the change in address occurs.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the rights of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all

parties, personally or by certified mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) (1) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business and Professions Code, which relates to the person's business, the division shall inquire at the time of the hearing whether the name of the person is the legal name under which the business or person has been licensed, registered, incorporated, or otherwise authorized to do business.

(2) The division may amend an order, decision, or award to conform to the legal name of the business or the person who is the defendant to a wage claim, if it can be shown that proper service was made on the defendant or his or her agent, unless a judgment had been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2. The Labor Commissioner may apply to the clerk of the superior court to amend a judgment that has been issued pursuant to a final order, decision, or award to conform to the legal name of the defendant, if it can be shown that proper service was made on the defendant or his or her agent.

(Amended by Stats. 2015, Ch. 803, Sec. 3. Effective January 1, 2016.)

98.1. (a) Within 15 days after the hearing is concluded, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. The order, decision, or award shall include a summary of the hearing and the reasons for the decision. Upon filing of the order, decision, or award, the Labor Commissioner shall serve a copy of the decision personally, by first-class mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure on the parties. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the superior court.

(b) For the purpose of this section, an award shall include any sums found owing, damages proved, and any penalties awarded pursuant to this code.

(c) All awards granted pursuant to a hearing under this chapter shall accrue interest on all due and unpaid wages at the same rate as prescribed by subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue until the wages are paid from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

(Amended by Stats. 2005, Ch. 405, Sec. 2. Effective January 1, 2006.)

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. The court shall charge the first paper filing fee under Section 70611 of the Government Code to the party seeking review. The fee shall be distributed as provided in Section 68085.3 of the Government Code. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure is applicable.

(b) As a condition to filing an appeal pursuant to this section, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the employee.

(c) If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.

(d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(e) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same

manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(f) (1) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in identifying the nature and location of any assets of the judgment debtor.

(2) The judgment debtor shall complete the form and cause it to be delivered to the division at the address listed on the form within 35 days after the form has been served on the judgment debtor, unless the judgment has been satisfied. In case of willful failure by the judgment debtor to comply with this subdivision, the division or the judgment creditor may request the court to apply the sanctions provided in Section 708.170 of the Code of Civil Procedure.

(g) (1) As an alternative to a judgment lien, upon the order becoming final pursuant to subdivision (d), a lien on real property may be created by the Labor Commissioner recording a certificate of lien, for amounts due under the final order and in favor of the employee or employees named in the order, with the county recorder of any county in which the employer's real property may be located, at the Labor Commissioner's discretion and depending upon information the Labor Commissioner obtains concerning the employer's assets. The lien attaches to all interests in real property of the employer located in the county where the lien is created to which a judgment lien may attach pursuant to Section 697.340 of the Code of Civil Procedure.

(2) The certificate of lien shall include information as prescribed by Section 27288.1 of the Government Code.

(3) The recorder shall accept and record the certificate of lien and shall index it as prescribed by law.

(4) Upon payment of the amount due under the final order, the Labor Commissioner shall issue a certificate of release, releasing the lien created under paragraph (1). The certificate of release may be recorded by the employer at the employer's expense.

(5) Unless the lien is satisfied or released, a lien under this section shall continue until 10 years from the date of its creation.

(h) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of any judgment entered upon an order, decision, or award that has become final upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(i) When a judgment is satisfied in fact, other than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(j) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(k) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, is entitled to court costs and reasonable attorney's fees for enforcing the judgment that is rendered pursuant to this section.

(Amended by Stats. 2013, Ch. 750, Sec. 1. Effective January 1, 2014.)

98.3. (a) The Labor Commissioner may prosecute all actions for the collection of wages, penalties, and demands of persons who in the judgment of the Labor Commissioner are financially unable to employ counsel and the Labor Commissioner believes have claims which are valid and enforceable.

The Labor Commissioner may also prosecute actions for the return of worker's tools which are in the illegal possession of another person.

(b) The Labor Commissioner may prosecute action for the collection of wages and other moneys payable to employees or to the state arising out of an employment relationship or order of the Industrial Welfare Commission.

(c) The Labor Commissioner may also prosecute actions for wages or other monetary benefits that are due the Industrial Relations Unpaid Wage Fund.

(Added by Stats. 1976, Ch. 1190.)

98.4. The Labor Commissioner may, upon the request of a claimant financially unable to afford counsel, represent such claimant in the de novo proceedings provided for in Section 98.2. In the event that such claimant is attempting to uphold the amount awarded by the Labor Commissioner and is not objecting to any part of the Labor Commissioner's final order, the Labor Commissioner shall represent the claimant.

(Added by Stats. 1976, Ch. 1190.)

98.5. The Labor Commissioner shall have the right to intervene in any court proceedings conducted pursuant to Section 98.2 where questions of the interpretation of statutes or administrative regulations are present.

(Repealed and added by Stats. 1976, Ch. 1190.)

98.6. (a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

(2) An employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a

grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(3) In addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars ($10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in subparagraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

(e) An employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have, engaged in any conduct delineated in this chapter.

(f) For purposes of this section, "employer" or "a person acting on behalf of the employer" includes, but is not limited to, a client employer as defined in paragraph (1) of subdivision (a) of Section 2810.3 and an employer listed in subdivision (b) of Section 6400.

(g) Subdivisions (e) and (f) shall not apply to claims arising under subdivision (k) of Section 96 unless the lawful conduct occurring during nonwork hours away from the employer's premises involves the exercise of employee rights otherwise covered under subdivision (a).

(Amended by Stats. 2015, Ch. 792, Sec. 1. Effective January 1, 2016.)

98.7. (a) Any person who believes that he or she has been discharged or otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with the division within six months after the occurrence of the violation. The six-month period may be extended for good cause. The complaint shall be investigated by a discrimination complaint investigator in accordance with this section. The Labor Commissioner shall establish procedures for the investigation of discrimination complaints. A summary of the procedures shall be provided to each complainant and respondent at the time of initial contact. The Labor Commissioner shall inform complainants charging a violation of Section 6310 or 6311, at the time of initial contact, of his or her right to file a separate, concurrent complaint with the United States Department of Labor within 30 days after the occurrence of the violation.

(b) Each complaint of unlawful discharge or discrimination shall be assigned to a discrimination complaint investigator who shall prepare and submit a report to the Labor Commissioner based on an investigation of the complaint. The Labor Commissioner may designate the chief deputy or assistant Labor Commissioner or the chief counsel to receive and review the reports. The investigation shall include, where appropriate, interviews with the complainant, respondent, and any witnesses who may have information concerning the alleged violation, and a review of any documents that may be relevant to the disposition of the complaint. The identity of a witness shall remain confidential unless the identification of the witness becomes necessary to proceed with the investigation or to prosecute an action to enforce a determination. The investigation report submitted to the Labor Commissioner or designee shall include the statements and documents obtained in the investigation, and the findings of the investigator concerning whether a violation occurred. The Labor Commissioner may hold an investigative hearing whenever the Labor Commissioner determines, after review of the investigation report, that a hearing is necessary to fully establish the facts. In the hearing the investigation report shall be made a part of the record and the complainant and respondent shall have the opportunity to present further evidence. The Labor Commissioner shall issue, serve, and enforce any necessary subpoenas.

(c) If the Labor Commissioner determines a violation has occurred, he or she shall notify the complainant and respondent and direct the respondent to cease and desist from the violation and take any action deemed necessary to remedy the violation, including, where appropriate, rehiring or reinstatement, reimbursement of lost wages and interest thereon, payment of reasonable attorney's fees associated with any hearing held by the Labor Commissioner in investigating the complaint, and the posting of notices to employees. If the respondent does not comply with the order within 10 working days following notification of the Labor Commissioner's determination, the Labor Commissioner shall bring an action promptly in an appropriate court against the respondent. If the Labor Commissioner fails to bring an action in court promptly, the complainant may bring an action against the Labor Commissioner in any appropriate court for a writ of mandate to compel the Labor Commissioner to bring an action in court against the respondent. If the complainant prevails in his or her action for a writ, the court shall award the complainant court costs and reasonable attorney's fees, notwithstanding any other law. Regardless of any delay in bringing an action in court, the Labor Commissioner shall not be divested of jurisdiction. In any action, the court may permit the claimant to intervene as a party plaintiff to the action and shall have jurisdiction, for cause shown, to restrain the violation and to order all appropriate relief. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages

and interest thereon, and any other compensation or equitable relief as is appropriate under the circumstances of the case. The Labor Commissioner shall petition the court for appropriate temporary relief or restraining order unless he or she determines good cause exists for not doing so.

(d) (1) If the Labor Commissioner determines no violation has occurred, he or she shall notify the complainant and respondent and shall dismiss the complaint. The Labor Commissioner may direct the complainant to pay reasonable attorney's fees associated with any hearing held by the Labor Commissioner if the Labor Commissioner finds the complaint was frivolous, unreasonable, groundless, and was brought in bad faith. The complainant may, after notification of the Labor Commissioner's determination to dismiss a complaint, bring an action in an appropriate court, which shall have jurisdiction to determine whether a violation occurred, and if so, to restrain the violation and order all appropriate relief to remedy the violation. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, and other compensation or equitable relief as is appropriate under the circumstances of the case. When dismissing a complaint, the Labor Commissioner shall advise the complainant of his or her right to bring an action in an appropriate court if he or she disagrees with the determination of the Labor Commissioner, and in the case of an alleged violation of Section 6310 or 6311, to file a complaint against the state program with the United States Department of Labor.

(2) The filing of a timely complaint against the state program with the United States Department of Labor shall stay the Labor Commissioner's dismissal of the division complaint until the United States Secretary of Labor makes a determination regarding the alleged violation. Within 15 days of receipt of that determination, the Labor Commissioner shall notify the parties whether he or she will reopen the complaint filed with the division or whether he or she will reaffirm the dismissal.

(e) The Labor Commissioner shall notify the complainant and respondent of his or her determination under subdivision (c) or paragraph (1) of subdivision (d), not later than 60 days after the filing of the complaint. Determinations by the Labor Commissioner under subdivision (c) or (d) may be appealed by the complainant or respondent to the Director of Industrial Relations within 10 days following notification of the Labor Commissioner's determination. The appeal shall set forth specifically and in full detail the grounds upon which the appealing party considers the Labor Commissioner's determination to be unjust or unlawful, and every issue to be considered by the director. The director may consider any issue relating to the initial determination and may modify, affirm, or reverse the Labor Commissioner's determination. The director's determination shall be the determination of the Labor Commissioner. The director shall notify the complainant and respondent of his or her determination within 10 days of receipt of the appeal.

(f) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other law.

(g) In the enforcement of this section, there is no requirement that an individual exhaust administrative remedies or procedures.

(Amended by Stats. 2013, Ch. 732, Sec. 3. Effective January 1, 2014.)

98.75. The Labor Commissioner shall submit a report to the Legislature by February 15, 1987, and annually thereafter by February 15, providing the following information with respect to discrimination complaints for the previous calendar year:

(a) The number of complaints filed pursuant to Section 98.7 or 1197.5, grouped according to the section of the Labor Code allegedly violated.

(b) The number of determinations issued, the number of investigative hearings held, the number of complaints dismissed, and the number of complaints found to be valid, grouped by the year in which the complaints were filed.

(c) The number of cases in which the respondent complied with the Labor Commissioner's order to remedy unlawful discrimination, the number of these orders with which respondents failed to comply, the number of court actions brought by the Labor Commissioner to remedy unlawful discrimination, and the results of those court actions. If the Labor Commissioner did not bring an action in court within 10 days against a respondent who failed to comply with his or her order, the report shall specify the reasons for not bringing action in court.

(Added by Stats. 1985, Ch. 1479, Sec. 3.)

98.8. The Labor Commissioner shall promulgate all regulations and rules of practice and procedure necessary to carry out the provisions of this chapter.

(Added by Stats. 1976, Ch. 1190.)

98.9. Upon a finding by the Labor Commissioner that a willful or deliberate violation of any of the provisions of the Labor Code, within the jurisdiction of the Labor Commissioner, has been committed by a person licensed as a contractor pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, in the course of such licensed activity, the Labor Commissioner shall immediately, upon expiration of the period for review specified in Section 98.2, or other applicable section, deliver a certified copy of the finding of the violation to the registrar of the Contractors' State License Board.

(Added by Stats. 1978, Ch. 1247.)

98.10. (a) On or before June 1, 2017, the Labor Commissioner shall develop a model notice pertaining to workplace rights and wage and hour laws for employees of establishments licensed under Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code. The model posting notice shall be developed using plain language, and in all languages listed in subdivision (c), and be accessible on the Labor Commissioner's Internet Web site so that it is reasonably accessible to an establishment that must comply with Section 7353.4 of the Business and Professions Code.

(b) The model notice shall include information, including, but not limited to, all of the following:

(1) Misclassification of an employee as an independent contractor.

(2) Wage and hour laws, including, but not limited to, minimum wage, overtime compensation, meal periods, and rest periods.

(3) Tip or gratuity distribution.

(4) How to report violations of the law.

(5) Business expense reimbursement.

(6) Protection from retaliation.

(c) The model notice shall include full text translations in Spanish, Vietnamese, and Korean.

(Added by Stats. 2016, Ch. 357, Sec. 2. Effective January 1, 2017.)

99. The division may file preferred claims, mechanics' liens, and other liens of employees in the name of the Labor Commissioner, his deputy or representative or in the names of the employees, whenever the facts have been investigated and

found to support the claims. A statement that such facts have been found shall be alleged in the preferred claim or lien if it is filed in the name of the Labor Commissioner, his deputy or representative.

(Enacted by Stats. 1937, Ch. 90.)

100. The division may join various claimants in one preferred claim or lien as well as list them with the data regarding their claims in an exhibit and join them, in case of suit, in one cause of action in cases where no valid reason exists for making separate causes of action for each individual employee.

(Enacted by Stats. 1937, Ch. 90.)

100.5. Preferred claims for work performed or personal services rendered are provided for in Sections 1204, 1205, 1206, 1207, and 1208 of the Code of Civil Procedure, and Part 9 (commencing with Section 11400) of Division 7 of the Probate Code.

(Amended by Stats. 1988, Ch. 1199, Sec. 22.5. Operative July 1, 1989, by Sec. 119 of Ch. 1199.)

101. No court costs of any nature shall be payable by the division, in any civil action to which the division is a party. Any sheriff or marshal requested by the Labor Commissioner or a deputy or representative of the Labor Commissioner shall serve the summons in the action upon any person within the jurisdiction of the sheriff or marshal or levy under a writ of attachment or execution in the action upon the property of any defendant without cost to the division except for keeper's fees, service fees, and storage charges.

(Amended by Stats. 1996, Ch. 872, Sec. 103. Effective January 1, 1997.)

101.5. No fees shall be payable for the filing or recording of any document or paper in the performance of any official service by the Labor Commissioner. The amount ordinarily charged for such filing or recording shall be made a part of any judgment recovered by the Labor Commissioner and shall be paid by the Labor Commissioner if sufficient money is collected over and above the wages, penalties, or demands actually due the claimants.

(Amended by Stats. 1976, Ch. 1190.)

102. The sheriff or marshal shall specify when the summons or process is returned, what costs he or she would ordinarily have been entitled to for such service, and those costs and the other regular court costs that would have accrued if the action was not by the Labor Commissioner shall be made a part of any judgment recovered by the Labor Commissioner and shall be paid by the Labor Commissioner if sufficient money is collected over and above the wages, penalties, or demands actually due the claimants.

(Amended by Stats. 1996, Ch. 872, Sec. 104. Effective January 1, 1997.)

103. The Labor Commissioner shall, to the extent provided for by any reciprocal agreement entered into pursuant to Section 64, or by the laws of any other state, maintain actions in the courts of the other state for the collection of the claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of the other state for collection to the extent that they may be permitted or provided for by the laws of that state or by reciprocal agreement.

(Amended by Stats. 1983, Ch. 142, Sec. 98.)

104. The Labor Commissioner shall, upon the written request of the labor department or other corresponding agency of any other state or of any person, board, officer or commission of such state authorized to act for and on behalf of such labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments and demands arising in such other state in the same manner and to the same extent that such actions by the Labor Commissioner are authorized when arising in this state; provided, however, that such actions may be commenced and maintained only in those cases where such other state by appropriate legislation or by reciprocal agreement extends a like comity to cases arising in this state.

(Amended by Stats. 1976, Ch. 1190.)

105. (a) The Labor Commissioner shall provide qualified bilingual persons in public contact positions or as interpreters to assist those in such positions to provide information and services in the language of a limited- or non-English-speaking person, with the primary effort being exerted towards the largest segments of the non-English-speaking persons in this state.

(b) The Labor Commissioner shall provide that an interpreter be present at all hearings and interviews where appropriate.

(c) The Labor Commissioner shall prepare and distribute to the public, through its local offices, materials explaining services available in non-English languages, as well as in English. In addition, the commissioner shall prepare and use written materials in non-English languages as well as in English for use by local offices if the local office serves a substantial number of non-English-speaking people, as defined in Section 7296.2 of the Government Code. The commissioner shall prepare and use such complaint processing forms and form letters in the language of non-English speaking people as the commissioner deems necessary and appropriate for the filing, investigation, and resolution of wage claims, giving due consideration to the rights and obligations of all parties. The commissioner may, from time to time, at his or her discretion, eliminate, modify, amend, or add to the complaint processing forms and form letters which are the subject of bilingual or multilingual treatment or application.

(Amended by Stats. 1984, Ch. 1089, Sec. 2.)

106. (a) The Labor Commissioner may authorize an employee of any of the agencies that participate in the Joint Enforcement Strike Force on the Underground Economy, as defined in Section 329 of the Unemployment Insurance Code, to issue citations pursuant to Sections 226.4 and 1022 and issue and serve a penalty assessment order pursuant to subdivision (a) of Section 3722.

(b) No employees shall issue citations or penalty assessment orders pursuant to this section unless they have been specifically designated, authorized, and trained by the Labor Commissioner for this purpose. Appeals of all citations or penalty assessment orders shall follow the procedures prescribed in Section 226.5, 1023, or 3725, whichever is applicable.

(Amended by Stats. 2004, Ch. 685, Sec. 1. Effective January 1, 2005.)

107. (a) The enforcement of Section 14110.65 of the Welfare and Institutions Code is vested with the State Department of Health Services.

(b) Any claim made under Section 14110.65 of the Welfare and Institutions Code shall not constitute a wage claim as provided in subdivision (a) of Section 96, and shall not be subject to this chapter.

(Added by Stats. 2002, Ch. 898, Sec. 18. Effective January 1, 2003.)

Chapter 4.5. Electrician Certification

(Chapter 4.5 added by Stats. 2012, Ch. 46, Sec. 79.)

108. (a) The Division of Labor Standards Enforcement shall do all of the following:

(1) Maintain minimum standards for the competency and training of electricians through a system of testing and certification.

(2) Maintain an advisory committee and panels as necessary to carry out the functions under this section. There shall be contractor representation from both joint apprenticeship programs and unilateral nonunion programs in the electrical contracting industry.

(3) Establish and collect fees necessary to implement this section.

(4) Carry out the responsibilities of the Division of Apprenticeship Standards that are specified in Subchapter 4 (commencing with Section 290) of Chapter 2 of Division 1 of Title 8 of the California Code of Regulations. The Labor Commissioner may amend or repeal existing regulations or adopt new regulations as necessary to enforce this section. Pending amendments to conform to this section, any reference within the Subchapter 4 regulations to the Chief of the Division of Apprenticeship Standards is deemed a reference to the Labor Commissioner, and references to prior statutory sections are deemed to refer to current statutory language as follows:

(A) References to former Section 3099 refer to current Section 108.

(B) References to former Section 3099.2 refer to current Section 108.2.

(C) References to former Section 3099.3 refer to current Section 108.3.

(D) References to former Section 3099.4 refer to current Section 108.4.

(E) References to former Section 3099.5 refer to current Section 108.5.

(5) Issue certification cards to electricians who have been certified pursuant to this section. Notwithstanding Section 13340 of the Government Code, fees collected pursuant to paragraph (3) are continuously appropriated in an amount sufficient to pay the costs of issuing certification cards, and that amount may be expended for that purpose by the division.

(6) Maintain an electrical certification curriculum committee comprised of representatives of the State Department of Education, the California Community Colleges, and the division. The electrical certification curriculum committee shall do all of the following:

(A) Establish written educational curriculum standards for enrollees in training programs established pursuant to Section 108.4.

(B) If an educational provider's curriculum meets the written educational curriculum standards established in accordance with subparagraph (A), designate that curriculum as an approved curriculum of classroom instruction.

(C) At the committee's discretion, review the approved curriculum of classroom instruction of any designated educational provider. The committee may withdraw its approval of the curriculum if the educational provider does not continue to meet the established written educational curriculum standards.

(D) Require each designated educational provider to submit an annual notice to the committee stating whether the educational provider is continuing to offer the approved curriculum of classroom instruction and whether any material changes have been made to the curriculum since its approval.

(b) There shall be no discrimination for or against any person based on membership or nonmembership in a union.

(c) As used in this section, "electricians" includes all persons who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electrical contractors in the Contractors' State License Board Rules and Regulations. This section does not apply to electrical connections under 100 volt-amperes. This section does not apply to persons performing work to which Section 7042.5 of the Business and Professions Code is applicable, or to electrical work ordinarily and customarily performed by stationary engineers. This section does not apply to electrical work in connection with the installation, operation, or maintenance of temporary or portable electrical equipment performed by technicians in the theatrical, motion picture production, television, hotel, exhibition, or trade show industries.

(Added by Stats. 2012, Ch. 46, Sec. 79. Effective June 27, 2012.)

108.2. (a) Persons who perform work as electricians shall become certified pursuant to Section 108. Uncertified persons shall not perform electrical work for which certification is required.

(b) (1) Certification is required only for those persons who perform work as electricians for contractors licensed as class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations.

(2) Certification is not required for persons performing work for contractors licensed as class C-7 low voltage systems or class C-45 electric sign contractors as long as the work performed is within the scope of the class C-7 or class C-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a class C-10 contractor.

(3) Certification is not required for work performed by a worker on a high-voltage electrical transmission or distribution system owned by a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code; an electrical corporation, as defined in Section 218 of the Public Utilities Code; a person, as defined in Section 205 of the Public Utilities Code; or a corporation, as defined in Section 204 of the Public Utilities Code; when the worker is employed by the utility or a licensed contractor principally engaged in installing or maintaining transmission or distribution systems.

(4) Individuals desiring to be certified shall submit an application for certification and examination that includes an employment history report from the Social Security Administration. The individual may redact his or her social security number from the employment history report before it is submitted.

(c) The division shall maintain separate certifications for general electrician, fire/life safety technician, residential electrician, voice data video technician, and nonresidential lighting technician.

(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under Chapter 4 of Division 3 (commencing with Section 3070), a federal Office of Apprenticeship program, or a state apprenticeship program authorized by the federal Office of Apprenticeship. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 108.4.

(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by

the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 108.

(g) Notwithstanding subdivision (a), the qualifying person for a class C-10 electrical contractor license issued by the Contractors' State License Board need not also be certified pursuant to Section 108 to perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 108.4.

(h) The following shall constitute additional grounds for disciplinary proceedings, including suspension or revocation of the license of a class C-10 electrical contractor pursuant to Article 7 (commencing with Section 7090) of Chapter 9 of Division 3 of the Business and Professions Code:

(1) The contractor willfully employs one or more uncertified persons to perform work as electricians in violation of this section.

(2) The contractor willfully fails to provide the adequate supervision of uncertified workers required by paragraph (3) of subdivision (a) of Section 108.4.

(3) The contractor willfully fails to provide adequate supervision of apprentices performing work pursuant to subdivision (d).

(i) The Labor Commissioner shall maintain a process for referring cases to the Contractors' State License Board when it has been determined that a violation of this section has likely occurred. The Labor Commissioner shall have a memorandum of understanding with the Registrar of Contractors in furtherance of this section.

(j) Upon receipt of a referral by the Labor Commissioner alleging a violation under this section, the Registrar of Contractors shall open an investigation. Any disciplinary action against the licensee shall be initiated within 60 days of the receipt of the referral. The Registrar of Contractors may initiate disciplinary action against any licensee upon his or her own investigation, the filing of any complaint, or any finding that results from a referral from the Labor Commissioner alleging a violation under this section. Failure of the employer or employee to provide evidence of certification or trainee status shall create a rebuttable presumption of violation of this provision.

(k) For the purposes of this section, "electricians" has the same meaning as the definition set forth in Section 108.

(Added by Stats. 2012, Ch. 46, Sec. 79. Effective June 27, 2012.)

108.3. The Division of Labor Standards Enforcement shall do all of the following:

(a) Make information about electrician certification available in non-English languages spoken by a substantial number of construction workers, as defined in Section 7296.2 of the Government Code.

(b) Provide for the administration of certification tests in Spanish and, to the extent practicable, other non-English languages spoken by a substantial number of applicants, as defined in Section 7296.2 of the Government Code, except insofar as the ability to understand warning signs, instructions, and certain other information in English is necessary for safety reasons.

(c) Ensure, in conjunction with the California Apprenticeship Council, that all electrician apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 that impose minimum formal education requirements as a condition of entry provide for reasonable alternative means of satisfying those requirements.

(d) Ensure, in conjunction with the California Apprenticeship Council, that all electrician apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 have adopted reasonable procedures for granting credit toward a term of apprenticeship for other vocational training and on-the-job training experience.

(Added by Stats. 2012, Ch. 46, Sec. 79. Effective June 27, 2012.)

108.4. (a) An uncertified person may perform electrical work for which certification is required under Section 108 in order to acquire the necessary on-the-job experience for certification, if all of the following requirements are met:

(1) The person is registered with the Labor Commissioner. A list of current registrants shall be maintained by the division and made available to the public upon request.

(2) The person either has completed or is enrolled in an approved curriculum of classroom instruction.

(3) The employer attests that the person shall be under the direct supervision of an electrician certified pursuant to Section 108 who is responsible for supervising no more than one uncertified person. An employer who is found by the division to have failed to provide adequate supervision may be barred by the division from employing uncertified individuals pursuant to this section in the future.

(b) For purposes of this section, "an approved curriculum of classroom instruction" means a curriculum of classroom instruction approved by the electrician certification curriculum committee established pursuant to paragraph (6) of subdivision (a) of Section 108 and provided under the jurisdiction of the State Department of Education, the Board of Governors of the California Community Colleges, or the Bureau for Private Postsecondary and Vocational Education.

(c) The curriculum committee may grant approval to an educational provider that presently offers only a partial curriculum if the educational provider intends in the future to offer, or to cooperate with other educational providers to offer, a complete curriculum for the type of certification involved. The curriculum committee may require an educational provider receiving approval for a partial curriculum to periodically renew its approval with the curriculum committee until a complete curriculum is offered and approved. A partial curriculum means a combination of classes that does not include all classroom educational components of the complete curriculum for one of the categories of certification established in accordance with subdivision (c) of Section 108.2.

(d) An educational provider that receives approval for a partial curriculum must disclose in all communications to students and to the public that the educational provider has only received approval for a partial curriculum and shall not make any representations that the provider offers a complete approved curriculum of classroom instruction as established by subparagraph (A) of paragraph (6) of subdivision (a) of Section 108.

(e) For purposes of this section, a person is enrolled in an approved curriculum of classroom instruction if the person is attending classes on a full-time or part-time basis toward the completion of an approved curriculum.

(f) Registration under this section shall be renewed annually and the registrant shall provide to the division certification of the classwork completed and on-the-job experience acquired since the prior registration.

(g) For purposes of verifying the information provided by a person registered with the division, an educational provider of

an approved curriculum of classroom instruction shall, upon the division's request, provide the division with information regarding the enrollment status and instruction completed by a person registered. By registering with the division in accordance with this section, a person consents to the release of this information.

(h) The division shall establish registration fees necessary to implement this section, not to exceed twenty-five dollars ($25) for the initial registration. There shall be no fee for annual renewal of registration. Notwithstanding Section 13340 of the Government Code, fees collected are continuously appropriated in an amount sufficient to administer this section and that amount may be expended by the division for this purpose.

(i) The division shall issue regulations to implement this section.

(j) For purposes of Section 1773, persons employed pursuant to this section do not constitute a separate craft, classification, or type of worker.

(k) Notwithstanding any other provision of law, an uncertified person who has completed an approved curriculum of classroom instruction and is currently registered with the division may take the certification examination. The person shall be certified upon passing the examination and satisfactorily completing the requisite number of on-the-job hours required for certification. A person who passes the examination prior to completing the requisite hours of on-the-job experience shall continue to comply with subdivision (f).

(Added by Stats. 2012, Ch. 46, Sec. 79. Effective June 27, 2012.)

108.5. (a) The Electrician Certification Fund is established as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the costs of the Division of Labor Standards Enforcement program to validate and certify electricians as provided by Section 108, and shall not be used for any other purpose.

(b) The fund shall consist of the fees collected pursuant to Section 108.

(Added by Stats. 2012, Ch. 46, Sec. 79. Effective June 27, 2012.)

Chapter 5. Division of Workers' Compensation

(Heading of Chapter 5 amended by Stats. 2002, Ch. 6, Sec. 23.5.)

110. As used in this chapter:

(a) "Appeals board" means the Workers' Compensation Appeals Board. The title of a member of the board is "commissioner."

(b) "Administrative director" means the Administrative Director of the Division of Workers' Compensation.

(c) "Division" means the Division of Workers' Compensation.

(d) "Medical director" means the physician appointed by the administrative director pursuant to Section 122.

(e) "Qualified medical evaluator" means physicians appointed by the administrative director pursuant to Section 139.2.

(Amended by Stats. 2011, Ch. 559, Sec. 2. Effective October 7, 2011.)

111. The Workers' Compensation Appeals Board, consisting of seven members, shall exercise all judicial powers vested in it under this code. In all other respects, the Division of Workers' Compensation is under the control of the administrative director and, except as to those duties, powers, jurisdiction, responsibilities, and purposes as are specifically vested in the appeals board, the administrative director shall exercise the powers of the head of a department within the meaning of Article 1 (commencing with Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code with respect to the Division of Workers' Compensation which shall include supervision of, and responsibility for, personnel, and the coordination of the work of the division, except personnel of the appeals board.

(Amended by Stats. 2012, Ch. 728, Sec. 117. Effective January 1, 2013.)

112. The members of the appeals board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members appointed prior to January 1, 1990, shall be four years, and the term of office of members appointed on or after January 1, 1990, shall be six years and they shall hold office until the appointment and qualification of their successors.

Five of the members of the appeals board shall be experienced attorneys at law admitted to practice in the State of California. The other two members need not be attorneys at law. All members shall be selected with due consideration of their judicial temperament and abilities. Each member shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1990, Ch. 1550, Sec. 8.5.)

113. The Governor shall designate the chairman of the appeals board from the membership of the appeals board. The person so designated shall hold the office of chairman at the pleasure of the Governor.

The chairman may designate in writing one of the other members of the appeals board to act as chairman during such time as he may be absent from the state on official business, on vacation, or absent due to illness.

(Repealed and added by Stats. 1965, Ch. 1513.)

115. Actions of the appeals board shall be taken by decision of a majority of the appeals board except as otherwise expressly provided.

The chairman shall assign pending cases in which reconsideration is sought to any three members thereof for hearing, consideration and decision. Assignments by the chairman of members to such cases shall be rotated on a case-by-case basis with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continued composition of members. Any such case assigned to any three members in which the finding, order, decision or award is made and filed by any two or more of such members shall be the action of the appeals board unless reconsideration is had in accordance with the provisions of Article 1 (commencing with Section 5900), Chapter 7, Part 4, Division 4 of this code. Any case assigned to three members shall be heard and decided only by them, unless the matter has been reassigned by the chairman on a majority vote of the appeals board to the appeals board as a whole in order to achieve uniformity of decision, or in cases presenting novel issues.

(Repealed and added by Stats. 1965, Ch. 1513.)

116. The seal of the appeals board bearing the inscription "Workers' Compensation Appeals Board, Seal" shall be affixed to all writs and authentications of copies of records and to such other instruments as the appeals board directs.

(Amended by Stats. 1981, Ch. 21, Sec. 4. Effective April 18, 1981.)

117. The administrative director may appoint an attorney licensed to practice law in the state as counsel to the division.

(Amended by Stats. 1989, Ch. 892, Sec. 13.)

119. The attorney shall:

(a) Represent and appear for the state and the Division of Workers' Compensation and the appeals board in all actions and proceedings arising under any provision of this code administered by the division or under any order or act of the division or the

appeals board and, if directed so to do, intervene, if possible, in any action or proceeding in which any such question is involved.

(b) Commence, prosecute, and expedite the final determination of all actions or proceedings, directed or authorized by the administrative director or the appeals board.

(c) Advise the administrative director and the appeals board and each member thereof, upon request, in regard to the jurisdiction, powers or duties of the administrative director, the appeals board and each member thereof.

(d) Generally perform the duties and services as attorney to the Division of Workers' Compensation and the appeals board which are required of him or her.

(Amended by Stats. 1994, Ch. 1097, Sec. 6. Effective January 1, 1995.)

120. The administrative director and the chairman of the appeals board may each respectively appoint a secretary and assistant secretaries to perform such services as shall be prescribed.

(Repealed and added by Stats. 1965, Ch. 1513.)

121. The chairman of the appeals board may authorize its secretary and any two assistant secretaries to act as deputy appeals board members and may delegate authority and duties to these deputies. Not more than three deputies may act as appeals board members at any one time. No act of any deputy shall be valid unless it is concurred in by at least one member of the appeals board.

(Amended by Stats. 1981, Ch. 1150, Sec. 1.)

122. The administrative director shall appoint a medical director who shall possess a physician's and surgeon's certificate granted under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. The medical director shall employ medical assistants who shall also possess physicians' and surgeons' certificates and other staff necessary to the performance of his or her duties. The salaries for the medical director and his or her assistants shall be fixed by the Department of Human Resources, commensurate with the salaries paid by private industry to medical directors and assistant medical directors.

(Amended by Stats. 2012, Ch. 665, Sec. 176. Effective January 1, 2013.)

123. The administrative director may employ necessary assistants, officers, experts, statisticians, actuaries, accountants, workers' compensation administrative law judges, stenographic shorthand reporters, legal secretaries, disability evaluation raters, program technicians, and other employees to implement new, efficient court management systems. The salaries of the workers' compensation administrative law judges shall be fixed by the Department of Human Resources for a class of positions which perform judicial functions.

(Amended by Stats. 2012, Ch. 665, Sec. 177. Effective January 1, 2013.)

123.3. Any official reporter employed by the administrative director shall render stenographic or clerical assistance as directed by the presiding workers' compensation administrative law judge of the office to which the reporter is assigned, when the presiding workers' compensation administrative law judge determines that the reporter is not engaged in the performance of any other duty imposed by law.

(Amended by Stats. 2002, Ch. 6, Sec. 26. Effective January 1, 2003.)

123.5. (a) Workers' compensation administrative law judges employed by the administrative director shall be taken from an eligible list of attorneys licensed to practice law in this state, who have the qualifications prescribed by the State Personnel Board. In establishing eligible lists for this purpose, state civil service examinations shall be conducted in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Every workers' compensation judge shall maintain membership in the State Bar of California during his or her tenure.

A workers' compensation administrative law judge may not receive his or her salary as a workers' compensation administrative law judge while any cause before the workers' compensation administrative law judge remains pending and undetermined for 90 days after it has been submitted for decision.

(b) All workers' compensation administrative law judges appointed on or after January 1, 2003, shall be attorneys licensed to practice law in California for five or more years prior to their appointment and shall have experience in workers' compensation law.

(Amended by Stats. 2011, Ch. 559, Sec. 3. Effective October 7, 2011.)

123.6. (a) All workers' compensation administrative law judges employed by the administrative director shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code or to the commentary to the Code of Judicial Ethics.

In consultation with the Commission on Judicial Performance, the administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(b) Honoraria or travel allowed by the administrative director, and not otherwise prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the administrative director has provided prior approval in writing to the workers' compensation administrative law judge allowing him or her to accept those payments.

(Amended by Stats. 2011, Ch. 559, Sec. 4. Effective October 7, 2011.)

123.7. The appeals board may, by rule or regulation, establish procedures whereby attorneys who are either certified specialists in workers' compensation by the California State Bar, or are eligible for this certification, may be appointed by the presiding workers' compensation judge of each board office to serve as a pro tempore workers' compensation judge in a particular case, upon the stipulation of the employee or his or her representative, and the employer or the insurance carrier. Service in this capacity by an attorney shall be voluntary and without pay. It is the intent of the Legislature that the use of pro tempore workers' compensation judges pursuant to this section shall not result in a reduction of the number of permanent civil service employees or the number of authorized full-time equivalent positions.

(Amended by Stats. 1985, Ch. 326, Sec. 6.)

124. (a) In administering and enforcing this division and Division 4 (commencing with Section 3200), the division shall protect the interests of injured workers who are entitled to the timely provision of compensation.

(b) Forms and notices required to be given to employees by the division shall be in English and Spanish.

(c) In addition to the requirement in subdivision (b), no later than January 1, 2018, the department and the division shall make

at least the following forms, notices, and materials available in Chinese, Korean, Tagalog, and Vietnamese:

(1) The workers' compensation claim form required pursuant to Section 5401.

(2) The application for the Return-to-Work Supplement Program authorized pursuant to Section 139.48.

(3) Supplemental Job Displacement Non-Transferable Voucher.

(4) Division of Workers' Compensation fact sheets distributed to injured workers, including, but not limited to, those addressing the following topics:

(A) Temporary disability.

(B) Permanent disability.

(C) Qualified medical evaluators.

(D) Uninsured Employers Benefits Trust Fund.

(E) Utilization review.

(F) Basic facts on workers' compensation.

(G) Glossary of terms in workers' compensation.

(d) (1) Commencing January 1, 2018, the Administrative Director shall annually review the forms, notices, and materials that are published and distributed by the division to injured workers and recommend to the division any other documents that should be translated into languages other than English pursuant to subdivisions (b) and (c).

(2) Commencing January 1, 2018, and annually thereafter, the department and the division shall submit the recommendations and any translated documents to the Legislature.

(Amended by Stats. 2015, Ch. 515, Sec. 1. Effective January 1, 2016.)

125. The administrative director shall cause to be printed and furnished free of charge to any person blank forms that may facilitate or promote the efficient performance of the duties of the Division of Workers' Compensation.

(Amended by Stats. 1994, Ch. 146, Sec. 139. Effective January 1, 1995.)

126. The Division of Workers' Compensation, including the administrative director and the appeals board, shall keep minutes of all their proceedings and other books or records requisite for proper and efficient administration. All records shall be kept in their respective offices.

(Amended by Stats. 1994, Ch. 146, Sec. 140. Effective January 1, 1995.)

127. The administrative director may do all of the following:

(a) Charge and collect fees for copies of papers and records, for certified copies of official documents and orders or of the evidence taken or proceedings had, for transcripts of testimony, and for inspection of case files not stored in the place where the inspection is requested. The administrative director shall fix those fees in an amount sufficient to recover the actual costs of furnishing the services. No fees for inspection of case files shall be charged to an injured employee or his or her representative.

(b) Publish and distribute from time to time, in addition to the reports to the Governor, further reports and pamphlets covering the operations, proceedings, and matters relative to the work of the division.

(c) Prepare, publish, and distribute an office manual, for which a reasonable fee may be charged, and to which additions, deletions, amendments, and other changes from time to time may be adopted, published, and distributed, for which a reasonable fee may be charged for the revision, or for which a reasonable fee may be fixed on an annual subscription basis.

(d) Fix and collect reasonable charges for publications issued.

(Amended by Stats. 2011, Ch. 559, Sec. 5. Effective October 7, 2011.)

128. The appeals board may accept appointment as deputy commissioner under, or any delegation of authority to enforce, the United States Longshoremen's and Harbor Worker's Compensation Act. The appeals board may enter into arrangements with the United States, subject to the approval of the Department of Finance, for the payment of any expenses incurred in the performance of services under said act. In the performance of any duties under said act, appointment, or authority, the appeals board may, subject to the provisions thereof, exercise any authority conferred upon the appeals board by the laws of this state.

(Amended by Stats. 1965, Ch. 1513.)

129. (a) To make certain that injured workers, and their dependents in the event of their death, receive promptly and accurately the full measure of compensation to which they are entitled, the administrative director shall audit insurers, self-insured employers, and third-party administrators to determine if they have met their obligations under this code. Each audit subject shall be audited at least once every five years. The audit subjects shall be selected and the audits conducted pursuant to subdivision (b). The results of audits of insurers shall be provided to the Insurance Commissioner, and the results of audits of self-insurers and third-party administrators shall be provided to the Director of Industrial Relations. Nothing in this section shall restrict the authority of the Director of Industrial Relations or the Insurance Commissioner to audit their licensees.

(b) The administrative director shall schedule and conduct audits as follows:

(1) A profile audit review of every audit subject shall be conducted once every five years and on additional occasions indicated by target audit criteria. The administrative director shall annually establish a profile audit review performance standard that will identify the poorest performing audit subjects.

(2) A full compliance audit shall be conducted of each profile audited subject failing to meet or exceed the profile audit review performance standard. The full compliance audit shall be a comprehensive and detailed evaluation of the audit subject's performance. The administrative director shall annually establish a full compliance audit performance standard that will identify the audit subjects that are performing satisfactorily. Any full compliance audit subject that fails to meet or exceed the full compliance audit performance standard shall be audited again within two years.

(3) A targeted profile audit review or a full compliance audit may be conducted at any time in accordance with target audit criteria adopted by the administrative director. The target audit criteria shall be based on information obtained from benefit notices, from information and assistance officers, and from other reliable sources providing factual information that indicates an insurer, self-insured employer, or third-party administrator is failing to meet its obligations under this division or Division 4 (commencing with Section 3200) or the regulations of the administrative director.

(c) If, as a result of a profile audit review or a full compliance audit, the administrative director determines that any compensation, interest, or penalty is due and unpaid to an employee or dependent, the administrative director shall issue and cause to be served upon the insurer, self-insured employer, or third-party administrator a notice of assessment detailing the amounts due and unpaid in each case, and shall order the amounts paid to the person entitled thereto. The notice of assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. A copy of the notice of assessment shall also be sent to the affected employee or dependent.

If the amounts are not paid within 30 days after service of the notice of assessment, the employer shall also be liable for reasonable attorney's fees necessarily incurred by the employee or dependent to obtain amounts due. The administrative director shall advise each employee or dependent still owed compensation after this 30-day period of his or her rights with respect to the commencement of proceedings to collect the compensation owed. Amounts unpaid because the person entitled thereto cannot be located shall be paid to the Workers' Compensation Administration Revolving Fund. The Director of Industrial Relations shall promulgate rules and regulations establishing standards and procedures for the payment of compensation from moneys deposited in the Workers' Compensation Administration Revolving Fund whenever the person entitled thereto applies for compensation.

(d) A determination by the administrative director that an amount is or is not due to an employee or dependent shall not in any manner limit the jurisdiction or authority of the appeals board to determine the issue.

(e) Annually, commencing on April 1, 1991, the administrative director shall publish a report detailing the results of audits conducted pursuant to this section during the preceding calendar year. The report shall include the name of each insurer, self-insured employer, and third-party administrator audited during that period. For each insurer, self-insured employer, and third-party administrator audited, the report shall specify the total number of files audited, the number of violations found by type and amount of compensation, interest and penalties payable, and the amount collected for each violation. The administrative director shall also publish and make available to the public on request a list ranking all insurers, self-insured employers, and third-party administrators audited during the period according to their performance measured by the profile audit review and full compliance audit performance standards.

These reports shall not identify the particular claim file that resulted in a particular violation or penalty. Except as required by this subdivision or other provisions of law, the contents of individual claim files and auditor's working papers shall be confidential. Disclosure of claim information to the administrative director pursuant to an audit shall not waive the provisions of the Evidence Code relating to privilege.

(f) A profile audit review of the adjustment of claims against the Uninsured Employers Fund by the claims and collections unit of the Division of Workers' Compensation shall be conducted at least every five years. The results of this profile audit review shall be included in the report required by subdivision (e).

(Amended by Stats. 2002, Ch. 6, Sec. 33. Effective January 1, 2003.)

129.5. (a) The administrative director may assess an administrative penalty against an insurer, self-insured employer, or third-party administrator for any of the following:

(1) Failure to comply with the notice of assessment issued pursuant to subdivision (c) of Section 129 within 15 days of receipt.

(2) Failure to pay when due the undisputed portion of an indemnity payment, the reasonable cost of medical treatment of an injured worker, or a charge or cost implementing an approved vocational rehabilitation plan.

(3) Failure to comply with any rule or regulation of the administrative director.

(b) The administrative director shall promulgate regulations establishing a schedule of violations and the amount of the administrative penalty to be imposed for each type of violation. The schedule shall provide for imposition of a penalty of up to one hundred dollars ($100) for each violation of the less serious type and for imposition of penalties in progressively higher amounts for the most serious types of violations to be set at up to five thousand dollars ($5,000) per violation. The administrative director is authorized to impose penalties pursuant to rules and regulations which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation.

(2) The good faith of the insurer, self-insured employer, or third-party administrator.

(3) The history of previous violations, if any.

(4) The frequency of the violations.

(5) Whether the audit subject has met or exceeded the profile audit review performance standard.

(6) Whether a full compliance audit subject has met or exceeded the full compliance audit performance standard.

(7) The size of the audit subject location.

(c) The administrative director shall assess penalties as follows:

(1) If, after a profile audit review, the administrative director determines that the profile audit subject met or exceeded the profile audit review performance standard, no penalties shall be assessed under this section, but the audit subject shall be required to pay any compensation due and penalties due under subdivision (d) of Section 4650 as provided in subdivision (c) of Section 129.

(2) If, after a full compliance audit, the administrative director determines that the audit subject met or exceeded the full compliance audit performance standards, penalties for unpaid or late paid compensation, but no other penalties under this section, shall be assessed. The audit subject shall be required to pay any compensation due and penalties due under subdivision (d) of Section 4650 as provided in subdivision (c) of Section 129.

(3) If, after a full compliance audit, the administrative director determines that the audit subject failed to meet the full compliance audit performance standards, penalties shall be assessed as provided in a full compliance audit failure penalty schedule to be adopted by the administrative director. The full compliance audit failure penalty schedule shall adjust penalty levels relative to the size of the audit location to mitigate inequality between total penalties assessed against small and large audit subjects. The penalty amounts provided in the full compliance audit failure penalty schedule for the most serious type of violations shall not be limited by subdivision (b), but in no event shall the penalty for a single violation exceed forty thousand dollars ($40,000).

(d) The notice of penalty assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. The notice shall be in writing and shall describe the nature of the violation, including reference to the statutory provision or rule or regulation alleged to have been violated. The notice shall become final and the assessment shall be paid unless contested within 15 days of receipt by the insurer, self-insured employer, or third-party administrator.

(e) In addition to the penalty assessments permitted by subdivisions (a), (b), and (c), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars ($100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed or performed with sufficient frequency so as to indicate a general business practice any of the following:

(1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation.

(2) Refused to comply with known and legally indisputable compensation obligations.

(3) Discharged or administered compensation obligations in a dishonest manner.

(4) Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

Any employer, insurer, or third-party administrator that fails to meet the full compliance audit performance standards in two consecutive full compliance audits shall be rebuttably presumed to have engaged in a general business practice of discharging and administering its compensation obligations in a manner causing injury to those dealing with it.

Upon a second or subsequent finding, the administrative director shall refer the matter to the Insurance Commissioner or the Director of Industrial Relations and request that a hearing be conducted to determine whether the certificate of authority, certificate of consent to self-insure, or certificate of consent to administer claims of self-insured employers, as the case may be, shall be revoked.

(f) An insurer, self-insured employer, or third-party administrator may file a written request for a conference with the administrative director within seven days after receipt of a notice of penalty assessment issued pursuant to subdivision (a) or (c). Within 15 days of the conference, the administrative director shall issue a notice of findings and serve it upon the contesting party by registered or certified mail. Any amount found due by the administrative director shall become due and payable 30 days after receipt of the notice of findings. The 30-day period shall be tolled during any appeal. A writ of mandate may be taken from the findings to the appropriate superior court upon the execution by the contesting party of a bond to the state in the principal sum that is double the amount found due and ordered by the administrative director, on the condition that the contesting party shall pay any judgment and costs rendered against it for the amount.

(g) An insurer, self-insured employer, or third-party administrator may file a written request for a hearing before the Workers' Compensation Appeals Board within seven days after receipt of a notice of penalty assessment issued pursuant to subdivision (e). Within 30 days of the hearing, the appeals board shall issue findings and orders and serve them upon the contesting party in the manner provided in its rules. Any amount found due by the appeals board shall become due and payable 45 days after receipt of the notice of findings. Judicial review of the findings and order shall be had in the manner provided by Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4. The 45-day period shall be tolled during appellate proceedings upon execution by the contesting party of a bond to the state in a principal sum that is double the amount found due and ordered by the appeals board on the condition that the contesting party shall pay the amount ultimately determined to be due and any costs awarded by an appellate court.

(h) Nothing in this section shall create nor eliminate a civil cause of action for the employee and his or her dependents.

(i) All moneys collected under this section shall be deposited in the State Treasury and credited to the Workers' Compensation Administration Revolving Fund.

(Amended by Stats. 2002, Ch. 6, Sec. 34. Effective January 1, 2003.)

130. The appeals board and each of its members, its secretary, assistant secretaries, and workers' compensation judges, may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

(Amended by Stats. 1985, Ch. 326, Sec. 8.)

131. Each witness who appears by order of the appeals board or any of its members, or a workers' compensation judge, shall receive, if demanded, for his or her attendance the same fees and mileage allowed by law to a witness in civil cases, paid by the party at whose request the witness is subpoenaed, unless otherwise ordered by the appeals board. When any witness who has not been required to attend at the request of any party is subpoenaed by the appeals board, his or her fees and mileage may be paid from the funds appropriated for the use of the appeals board in the same manner as other expenses of the appeals board are paid. Any witness subpoenaed, except one whose fees and mileage are paid from the funds of the appeals board, may, at the time of service, demand the fee to which he or she is entitled for travel to and from the place at which he or she is required to appear, and one day's attendance. If a witness demands his or her fees at the time of service, and they are not at that time paid or tendered, he or she shall not be required to attend as directed in the subpoena. All fees and mileage to which any witness is entitled under this section may be collected by action therefor instituted by the person to whom the fees are payable.

(Amended by Stats. 1985, Ch. 326, Sec. 9.)

132. The superior court in and for the county in which any proceeding is held by the appeals board or a workers' compensation judge may compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts, and documents, as required by any subpoena regularly issued hereunder. In case of the refusal of any witness to obey the subpoena the appeals board or the workers' compensation judge, before whom the testimony is to be given or produced, may report to the superior court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, that the witness has been subpoenaed in the prescribed manner, and that the witness has failed and refused to obey the subpoena, or has refused to answer questions propounded to him or her in the course of the proceeding, and ask an order of the court, compelling the witness to attend and testify or produce the papers before the appeals board. The court shall thereupon enter an order directing the witness to appear before the court at a time and place fixed in the order, the time to be not more than 10 days from the date of the order, and then and there show cause why he or she had not attended and testified or produced the papers before the appeals board or the workers' compensation judge. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued hereunder and that the witness was legally bound to comply therewith, the court shall thereupon enter an order that the witness appear before the appeals board or the workers' compensation judge at a time and place fixed in the order, and testify or produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not impair or interfere with the power of the appeals board or a member thereof to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

(Amended by Stats. 1985, Ch. 326, Sec. 10.)

132a. It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made known his or her intention to testify in another employee's case before the appeals board, is guilty of a misdemeanor.

Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor.

(Amended by Stats. 1990, Ch. 1550, Sec. 13.)

133. The Division of Workers' Compensation, including the administrative director and the appeals board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.

(Amended by Stats. 2011, Ch. 559, Sec. 7. Effective October 7, 2011.)

134. The appeals board or any member thereof may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the appeals board or any member thereof shall extend to all parts of the state and may be served by any persons authorized to serve process of courts of record or by any person designated for that purpose by the appeals board or any member thereof. The person executing process shall receive compensation allowed by the appeals board, not to exceed the fees prescribed by law for similar services. Such fees shall be paid in the same manner as provided herein for the fees of witnesses.

(Amended by Stats. 1965, Ch. 1513.)

135. In accordance with rules of practice and procedure that it may adopt, the appeals board may, with the approval of the Secretary of State, destroy or otherwise dispose of any file kept by it in connection with any proceeding under Division 4 (commencing with Section 3200) or Division 4.5 (commencing with Section 6100).

(Amended by Stats. 2014, Ch. 28, Sec. 61. Effective June 20, 2014.)

138. The administrative director may appoint a deputy to act when he or she is absent from the state due to official business, vacation, or illness.

(Amended by Stats. 2011, Ch. 559, Sec. 8. Effective October 7, 2011.)

138.1. The administrative director shall be appointed by the Governor with the advice and consent of the Senate and shall hold office at the pleasure of the Governor. He or she shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2011, Ch. 559, Sec. 9. Effective October 7, 2011.)

138.2. (a) The headquarters of the Division of Workers' Compensation shall be based at and operated from a centrally located city.

The administrative director shall have an office in that city with suitable rooms, necessary office furniture, stationery, and supplies, and may rent quarters in other places for the purpose of establishing branch or service offices, and for that purpose may provide those offices with necessary furniture, stationery, and supplies.

(b) The administrative director shall provide suitable rooms, with necessary office furniture, stationery, and supplies, for the appeals board at the centrally located city in which the board shall be based and from which it shall operate, and may rent quarters in other places for the purpose of establishing branch or service offices for the appeals board, and for that purpose may provide those offices with necessary furniture, stationery, and supplies.

(c) All meetings held by the administrative director shall be open and public. Notice thereof shall be published in papers of general circulation not more than 30 days and not less than 10 days prior to each meeting in Sacramento, San Francisco, Fresno, Los Angeles, and San Diego. Written notice of all meetings shall be given to all persons who request, in writing directed to the administrative director, that they be given notice.

(Amended by Stats. 2011, Ch. 559, Sec. 10. Effective October 7, 2011.)

138.3. The administrative director shall, with respect to all injuries, prescribe, pursuant to Section 5402, reasonable rules and regulations requiring the employer to serve notice on the injured employee that he may be entitled to benefits under this division.

(Added by Stats. 1975, Ch. 1099.)

138.4. (a) For the purpose of this section, "claims administrator" means a self-administered workers' compensation insurer; or a self-administered self-insured employer; or a self-administered legally uninsured employer; or a self-administered joint powers authority; or a third-party claims administrator for an insurer, a self-insured employer, a legally uninsured employer, or a joint powers authority.

(b) With respect to injuries resulting in lost time beyond the employee's work shift at the time of injury or medical treatment beyond first aid:

(1) If the claims administrator obtains knowledge that the employer has not provided a claim form or a notice of potential eligibility for benefits to the employee, it shall provide the form and notice to the employee within three working days of its knowledge that the form or notice was not provided.

(2) If the claims administrator cannot determine if the employer has provided a claim form and notice of potential eligibility for benefits to the employee, the claims administrator shall provide the form and notice to the employee within 30 days of the administrator's date of knowledge of the claim.

(c) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall prescribe reasonable rules and regulations, including notice of the right to consult with an attorney, where appropriate, for serving on the employee (or employee's dependents, in the case of death), the following:

(1) Notices dealing with the payment, nonpayment, or delay in payment of temporary disability, permanent disability, supplemental job displacement, and death benefits.

(2) Notices of any change in the amount or type of benefits being provided, the termination of benefits, the rejection of any liability for compensation, and an accounting of benefits paid.

(3) Notices of rights to select the primary treating physician, written continuity of care policies, requests for a comprehensive medical evaluation, and offers of regular, modified, or alternative work.

(d) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall develop, make fully accessible on the department's Internet Web site, and make available at district offices informational material written in plain language that describes the overall workers' compensation claims process, including the rights and obligations of employees and employers at every stage of a claim when a notice is required.

(e) Each notice prescribed by the administrative director shall be written in plain language, shall reference the informational material described in subdivision (d) to enable employees to understand the context of the notices, and shall clearly state the Internet Web site address and contact information that an employee may use to access the informational material.

(f) On or before January 1, 2018, the administrative director shall adopt regulations to provide employees with notice that they may access medical treatment outside of the workers' compensation system following the denial of their claim.

(Amended by Stats. 2016, Ch. 868, Sec. 1. Effective January 1, 2017.)

138.5. The Division of Workers' Compensation shall cooperate in the enforcement of child support obligations. At the request of the Department of Child Support Services, the administrative director shall assist in providing to the State Department of Child Support Services information concerning persons who are receiving permanent disability benefits or who have filed an application for adjudication of a claim which the Department of Child Support Services determines is necessary to carry out its responsibilities pursuant to Section 17510 of the Family Code.

The process of sharing information with regard to applicants for and recipients of permanent disability benefits required by this section shall be known as the Workers' Compensation Notification Project.

(Amended by Stats. 2000, Ch. 808, Sec. 110. Effective September 28, 2000.)

138.6. (a) The administrative director, in consultation with the Insurance Commissioner and the Workers' Compensation Insurance Rating Bureau, shall develop a cost-efficient workers' compensation information system, which shall be administered by the division. The administrative director shall adopt regulations specifying the data elements to be collected by electronic data interchange.

(b) The information system shall do the following:

(1) Assist the department to manage the workers' compensation system in an effective and efficient manner.

(2) Facilitate the evaluation of the efficiency and effectiveness of the delivery system.

(3) Assist in measuring how adequately the system indemnifies injured workers and their dependents.

(4) Provide statistical data for research into specific aspects of the workers' compensation program.

(c) The data collected electronically shall be compatible with the Electronic Data Interchange System of the International Association of Industrial Accident Boards and Commissions. The administrative director may adopt regulations authorizing the use of other nationally recognized data transmission formats in addition to those set forth in the Electronic Data Interchange System for the transmission of data required pursuant to this section. The administrative director shall accept data transmissions in any authorized format. If the administrative director determines that any authorized data transmission format is not in general use by claims administrators, conflicts with the requirements of state or federal law, or is obsolete, the administrative director may adopt regulations eliminating that data transmission format from those authorized pursuant to this subdivision.

(d) (1) The administrative director shall assess an administrative penalty against a claims administrator for a violation of data reporting requirements adopted pursuant to this section. The administrative director shall promulgate a schedule of penalties providing for an assessment of no more than ten thousand dollars ($10,000) against a claims administrator in any single year, calculated as follows:

(A) No more than one hundred dollars ($100) multiplied by the number of violations in that year that resulted in a required data report not being submitted or not being accepted.

(B) No more than fifty dollars ($50) multiplied by the number of violations in that year that resulted in a required report being late or accepted with an error.

(C) Multiple errors in a single report shall be counted as a single violation.

(D) No penalty shall be assessed pursuant to Section 129.5 for any violation of data reporting requirements for which a penalty has been or may be assessed pursuant to this section.

(2) The schedule promulgated by the administrative director pursuant to paragraph (1) shall establish threshold rates of violations that shall be excluded from the calculation of the assessment, as follows:

(A) The threshold rate for reports that are not submitted or are submitted but not accepted shall not be less than 3 percent of the number of reports that are required to be filed by or on behalf of the claims administrator.

(B) The threshold rate for reports that are accepted with an error shall not be less than 3 percent of the number of reports that are accepted with an error.

(C) The administrative director shall set higher threshold rates as appropriate in recognition of the fact that the data necessary for timely and accurate reporting may not be always available to a claims administrator or the claims administrator's agents.

(D) The administrative director may establish higher thresholds for particular data elements that commonly are not reasonably available.

(3) The administrative director may estimate the number of required data reports that are not submitted by comparing a statistically valid sample of data available to the administrative director from other sources with the data reported pursuant to this section.

(4) All penalties assessed pursuant to this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

(5) The administrative director shall publish an annual report disclosing the compliance rates of claims administrators and post the report and a list of claims administrators who are in violation of the data reporting requirements on the Internet Web site of the Division of Workers' Compensation.

(Amended by Stats. 2016, Ch. 868, Sec. 2. Effective January 1, 2017.)

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits shall not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) (A) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(B) The administrative director may publish the identity of claims administrators in the annual report disclosing the compliance rates of claims administrators pursuant to subdivision (d) of Section 138.6.

(2) (A) The State Department of Public Health may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(B) (i) The State Department of Health Care Services may use individually identifiable information for purposes of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that should have been incurred by employers and insurance carriers pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(ii) The Department of Industrial Relations shall furnish individually identifiable information to the State Department of Health Care Services, and the State Department of Health Care Services may furnish the information to its designated agent, provided that the individually identifiable information shall not be disclosed for use other than the purposes described in clause (i). The administrative director may adopt regulations solely for the purpose of governing access by the State Department of Health Care Services or its designated agents to the individually identifiable information as defined in subdivision (a).

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation and the Division of Occupational Safety and Health as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) (A) This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5.

(B) Individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private entity identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is related to preemployment screening, the administrative director shall notify the person about whom the information is requested that the information was provided and shall include the following in 12-point type:

"IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE THE APPLICANT HAS FILED A CLAIM FOR WORKERS' COMPENSATION BENEFITS."

(C) Any residence address is confidential and shall not be disclosed to any person or public or private entity except to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.

(D) This paragraph does not prohibit the use of individually identifiable information for purposes of identifying bona fide lien claimants.

(c) Except as provided in subdivision (b), individually identifiable information obtained by the division is privileged and is not subject to subpoena in a civil proceeding unless, after reasonable notice to the division and a hearing, a court determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It is unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

(Amended (as amended by Stats. 2012, Ch. 46, Sec. 80) by Stats. 2016, Ch. 30, Sec. 18. Effective June 27, 2016.)

139.2. (a) The administrative director shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues. The appointments shall be for two-year terms.

(b) The administrative director shall appoint or reappoint as a qualified medical evaluator a physician, as defined in Section 3209.3, who is licensed to practice in this state and who demonstrates that he or she meets the requirements in paragraphs (1), (2), (6), and (7), and, if the physician is a medical doctor, doctor of osteopathy, doctor of chiropractic, or a psychologist, that he or she also meets the applicable requirements in paragraph (3), (4), or (5).

(1) Prior to his or her appointment as a qualified medical evaluator, passes an examination written and administered by the administrative director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. Physicians shall not be required to pass an additional examination as a condition of reappointment. A physician seeking appointment as a qualified medical evaluator on or after January 1, 2001, shall also complete prior to appointment, a course on disability evaluation report writing approved by the administrative director. The administrative director shall specify the curriculum to be covered by disability evaluation report writing courses, which shall include, but is not limited to, 12 or more hours of instruction.

(2) Devotes at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be appointed as a qualified medical evaluator.

(3) Is a medical doctor or doctor of osteopathy and meets one of the following requirements:

(A) Is board certified in a specialty by a board recognized by the administrative director and either the Medical Board of California or the Osteopathic Medical Board of California.

(B) Has successfully completed a residency training program accredited by the Accreditation Council for Graduate Medical Education or the osteopathic equivalent.

(C) Was an active qualified medical evaluator on June 30, 2000.

(D) Has qualifications that the administrative director and either the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, both deem to be equivalent to board certification in a specialty.

(4) Is a doctor of chiropractic and has been certified in California workers' compensation evaluation by a provider recognized by the administrative director. The certification program shall include instruction on disability evaluation report writing that meets the standards set forth in paragraph (1).

(5) Is a psychologist and meets one of the following requirements:

(A) Is board certified in clinical psychology by a board recognized by the administrative director.

(B) Holds a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, from a university or professional school recognized by the administrative director and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

(6) Does not have a conflict of interest as determined under the regulations adopted by the administrative director pursuant to subdivision (o).

(7) Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

(c) The administrative director shall adopt standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (2) of subdivision (b). A physician whose full-time practice is limited to the forensic evaluation of disability shall not be appointed as a qualified medical evaluator under this subdivision.

(d) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications of subdivision (b) and meets all of the following criteria:

(1) Is in compliance with all applicable regulations and evaluation guidelines adopted by the administrative director.

(2) Has not had more than five of his or her evaluations that were considered by a workers' compensation administrative law judge at a contested hearing rejected by the workers' compensation administrative law judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the workers' compensation administrative law judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the administrative director or the appeals board, the workers' compensation administrative law judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the administrative director. Any rejection shall not be counted

as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

(3) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the administrative director.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the administrative director during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the administrative director may, in his or her discretion, reappoint or deny reappointment according to regulations adopted by the administrative director. A physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) because his or her license has been revoked or terminated by the licensing authority shall not be reappointed.

(e) The administrative director may, in his or her discretion, suspend or terminate a qualified medical evaluator during his or her term of appointment without a hearing as provided under subdivision (k) or (l) whenever either of the following conditions occurs:

(1) The evaluator's license to practice in California has been suspended by the relevant licensing authority so as to preclude practice, or has been revoked or terminated by the licensing authority.

(2) The evaluator has failed to timely pay the fee required by the administrative director pursuant to subdivision (n).

(f) The administrative director shall furnish a physician, upon request, with a written statement of its reasons for termination of, or for denying appointment or reappointment as, a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the administrative director shall review his or her decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The administrative director shall establish agreements with qualified medical evaluators to ensure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h) (1) When requested by an employee or employer pursuant to Section 4062.1, the medical director appointed pursuant to Section 122 shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. Preference in assigning panels shall be given to cases in which the employee is not represented. If a panel is not assigned within 20 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice within a reasonable geographic area. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type requested by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request.

(2) The administrative director shall promulgate a form that shall notify the employee of the physicians selected for his or her panel after a request has been made pursuant to Section 4062.1 or 4062.2. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: "You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the workers' compensation administrative law judge will consider the evaluation prepared by the doctor you select to decide your claim."

(3) When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who meet all of the following criteria:

(A) He or she does not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o).

(B) He or she is certified by the administrative director to evaluate in an appropriate specialty and at locations within the general geographic area of the employee's residence. An evaluator shall not conduct qualified medical evaluations at more than 10 locations.

(C) He or she has not been suspended or terminated as a qualified medical evaluator for failure to pay the fee required by the administrative director pursuant to subdivision (n) or for any other reason.

(4) When the medical director determines that an employee has requested an evaluation by a type of specialist that is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122 shall continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.3, the administrative director shall adopt regulations concerning the following issues:

(1) (A) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. Except as provided in this subdivision, the timeframe for initial medical evaluations to be prepared and submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The administrative director shall develop regulations governing the provision of extensions of the 30-day period in both of the following cases:

(i) When the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline.

(ii) To extend the 30-day period by not more than 15 days when the failure to meet the 30-day deadline was for good cause.

(B) For purposes of subparagraph (A), "good cause" means any of the following:

(i) Medical emergencies of the evaluator or evaluator's family.

(ii) Death in the evaluator's family.

(iii) Natural disasters or other community catastrophes that interrupt the operation of the evaluator's business.

(C) The administrative director shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Section 4062.1. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury in a manner consistent with Sections 4660 and 4660.1.

(3) Procedures governing the determination of any disputed medical treatment issues in a manner consistent with Section 5307.27.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the Insurance Commissioner, or deemed appropriate by the administrative director.

(6) Any additional medical or professional standards that a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) Except as provided in this subdivision, the administrative director may, in his or her discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the administrative director, after hearing pursuant to subdivision (l), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the administrative director or the appeals board.

(6) Has made material misrepresentations or false statements in an application for appointment or reappointment as a qualified medical evaluator.

A hearing shall not be required prior to the suspension or termination of a physician's privilege to serve as a qualified medical evaluator when the physician has done either of the following:

(A) Failed to timely pay the fee required pursuant to subdivision (n).

(B) Had his or her license to practice in California suspended by the relevant licensing authority so as to preclude practice, or had the license revoked or terminated by the licensing authority.

(l) The administrative director shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the administrative director may, in his or her discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The administrative director shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The administrative director shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The administrative director shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board. If a physician is suspended or terminated as a qualified medical evaluator under this subdivision, a report prepared by the physician that is not complete, signed, and furnished to one or more of the parties prior to the date of conviction or action of the licensing board, whichever is earlier, shall not be admissible in any proceeding before the appeals board nor shall there be any liability for payment for the report and any expense incurred by the physician in connection with the report.

(n) A qualified medical evaluator shall pay a fee, as determined by the administrative director, for appointment or reappointment. These fees shall be based on a sliding scale as established by the administrative director. All revenues from fees paid under this subdivision shall be deposited into the Workers' Compensation Administration Revolving Fund and are available for expenditure upon appropriation by the Legislature, and shall not be used by any other department or agency or for any purpose other than administration of the programs of the Division of Workers' Compensation related to the provision of medical treatment to injured employees.

(o) An evaluator shall not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision.

(Amended by Stats. 2016, Ch. 86, Sec. 214. Effective January 1, 2017.)

139.21. (a) (1) The administrative director shall promptly suspend, pursuant to subdivision (b), any physician, practitioner, or provider from participating in the workers' compensation system as a physician, practitioner, or provider if the individual or entity meets any of the following criteria:

(A) The individual has been convicted of any felony or misdemeanor and that crime comes within any of the following descriptions:

(i) It involves fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system, or fraud or abuse of any patient.

(ii) It relates to the conduct of the individual's medical practice as it pertains to patient care.

(iii) It is a financial crime that relates to the Medi-Cal program, Medicare program, or workers' compensation system.

(iv) It is otherwise substantially related to the qualifications, functions, or duties of a provider of services.

(B) The individual or entity has been suspended, due to fraud or abuse, from the federal Medicare or Medicaid programs.

(C) The individual's license, certificate, or approval to provide health care has been surrendered or revoked.

(2) The administrative director shall exercise due diligence to identify physicians, practitioners, or providers who have been suspended as described in subdivision (a) by accessing the quarterly updates to the list of suspended and ineligible providers maintained by the State Department of Health Care Services for the Medi-Cal program at https://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp.

(b) (1) The administrative director shall adopt regulations for suspending a physician, practitioner, or provider from participating in the workers' compensation system, subject to the notice and hearing requirements in paragraph (2).

(2) The administrative director shall furnish to the physician, practitioner, or provider written notice of the right to a hearing regarding the suspension and the procedure to follow to request a hearing. The notice shall state that the administrative director is required to suspend the physician, practitioner, or provider pursuant to subdivision (a) after 30 days from the date the notice is mailed unless the physician, practitioner, or provider requests a hearing and, in that hearing, the physician, practitioner, or provider provides proof that paragraph (1) of subdivision (a) is not applicable. The physician, practitioner, or provider may request a hearing within 10 days from the date the notice is sent by the administrative director. The request for the hearing shall stay the suspension. The hearing shall be held within 30 days of the receipt of the request. Upon the completion of the hearing, if the administrative director finds that paragraph (1) of subdivision (a) is applicable, the administrative director shall immediately suspend the physician, practitioner, or provider.

(3) The administrative director shall have power and jurisdiction to do all things necessary or convenient to conduct the hearings provided for in paragraph (2). The hearings and investigations may be conducted by any designated hearing officer appointed by the administrative director. Any authorized person conducting that hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(c) The administrative director shall promptly notify the physician's, practitioner's, or provider's state licensing, certifying, or registering authority of a suspension imposed pursuant to this section and shall update the division's qualified medical evaluator and medical provider network databases, as appropriate.

(d) Upon suspension of a physician, practitioner, or provider pursuant to this section, the administrative director shall give notice of the suspension to the chief judge of the division, and the chief judge shall promptly thereafter provide written notification of the suspension to district offices and all workers' compensation judges. The method of notification to all district offices and to all workers' compensation judges shall be in a manner determined by the chief judge in his or her discretion. The administrative director shall also post notification of the suspension on the department's Internet Web site.

(e) The following procedures shall apply for the adjudication of any liens of a physician, practitioner, or provider suspended pursuant to subparagraph (A) of paragraph (1) of subdivision (a), including any liens filed by or on behalf of the physician, practitioner, or provider or any clinic, group or corporation in which the suspended physician, practitioner, or provider has an ownership interest.

(1) If the disposition of the criminal proceeding provides for or requires, whether by plea agreement or by judgment, dismissal of liens and forfeiture of sums claimed therein, as specified in the criminal disposition, all of those liens shall be deemed dismissed with prejudice by operation of law as of the effective date of the final disposition in the criminal proceeding, and orders notifying of those dismissals may and shall be entered by workers' compensation judges.

(2) If the disposition of the criminal proceeding fails to specify the disposition to be made of lien filings in the workers' compensation system as set forth in paragraph (1), all liens pending in any workers' compensation case in any district office within the state shall be consolidated and adjudicated in a special lien proceeding as described in subdivisions (f) to (i), inclusive.

(f) After notice of suspension, pursuant to subdivision (d), and if subdivision (e) applies, the administrative director shall appoint a special lien proceeding attorney, who shall be an attorney employed by the division or by the department. The special lien proceeding attorney shall, based on the information that is available, identify liens subject to disposition pursuant to subdivision (e), and workers' compensation cases in which those liens are pending, and shall notify the chief judge regarding those liens. Based on this information, the chief judge shall identify a district office for a consolidated special lien proceeding to adjudicate those liens, and shall appoint a workers' compensation judge to preside over that proceeding.

(g) It shall be a presumption affecting the burden of proof that all liens to be adjudicated in the special lien proceeding, and all underlying bills for service and claims for compensation asserted therein, arise from the conduct subjecting the physician, practitioner, or provider to suspension, and that payment is not due and should not be made on those liens because they arise from, or are connected to, criminal, fraudulent, or abusive conduct or activity. A lien claimant shall not have the right to payment unless he or she rebuts that presumption by a preponderance of the evidence.

(h) The special lien proceedings shall be governed by the same laws, regulations, and procedures that govern all other matters before the appeals board. The administrative director shall promulgate regulations for the implementation of this section.

(i) If it is determined in a special lien proceeding that a lien does not arise from the conduct subjecting a physician, practitioner, or provider to suspension, the workers' compensation judge shall have the discretion to adjudicate the lien or transfer the lien back to the district office having venue over the case in which the lien was filed.

(j) At any time following suspension, a physician, practitioner, or provider lien claimant may elect to withdraw or to dismiss his or her lien with prejudice, which shall constitute a final disposition of the claim for compensation asserted therein.

(k) The provisions of this section shall not affect, amend, alter, or in any way apply to the provisions of Section 139.2.

(Added by Stats. 2016, Ch. 852, Sec. 1. Effective January 1, 2017.)

139.3. (a) Notwithstanding any other law, to the extent those services are paid pursuant to Division 4 (commencing with Section 3200), it is unlawful for a physician to refer a person for clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, outpatient surgery, diagnostic imaging goods or services, or pharmacy goods, whether for treatment or medical-legal purposes, if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral.

(b) For purposes of this section and Section 139.31, the following shall apply:

(1) "Diagnostic imaging" includes, but is not limited to, all X-ray, computed axial tomography magnetic resonance imaging, nuclear medicine, positron emission tomography, mammography, and ultrasound goods and services.

(2) "Immediate family" includes the spouse and children of the physician, the parents of the physician, and the spouses of the children of the physician.

(3) "Physician" means a physician as defined in Section 3209.3.

(4) A "financial interest" includes, but is not limited to, any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the physician refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect relationship between a physician and the referral recipient, including, but not limited to, an arrangement whereby a physician has an ownership interest in any entity that leases property to the referral recipient. Any financial interest transferred by a physician to, or otherwise established in, any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the physician.

(5) A "physician's office" is either of the following:

(A) An office of a physician in solo practice.

(B) An office in which the services or goods are personally provided by the physician or by employees in that office, or personally by independent contractors in that office, in accordance with other provisions of law. Employees and independent contractors shall be licensed or certified when that licensure or certification is required by law.

(6) The "office of a group practice" is an office or offices in which two or more physicians are legally organized as a partnership, professional corporation, or not-for-profit corporation licensed according to subdivision (a) of Section 1204 of the Health and Safety Code for which all of the following are applicable:

(A) Each physician who is a member of the group provides substantially the full range of services that the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel.

(B) Substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group, and except that in the case of multispecialty clinics, as defined in subdivision (l) of Section 1206 of the Health and Safety Code, physician services are billed in the name of the multispecialty clinic and amounts so received are treated as receipts of the multispecialty clinic.

(C) The overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined by members of the group.

(7) Outpatient surgery includes both of the following:

(A) Any procedure performed on an outpatient basis in the operating rooms, ambulatory surgery rooms, endoscopy units, cardiac catheterization laboratories, or other sections of a freestanding ambulatory surgery clinic, whether or not licensed under paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code.

(B) The ambulatory surgery itself.

(8) "Pharmacy goods" means any dangerous drug or dangerous device as defined by Section 4022 of the Business and Professions Code, any medical food as defined by Section 109971 of the Health and Safety Code, and any over-the-counter drug as classified by the federal Food and Drug Administration, except over-the-counter drugs sold at commercially reasonable rates in physical retail outlets commonly accessed by the public.

(c) (1) It is unlawful for a licensee to enter into an arrangement or scheme, such as a cross-referral arrangement, that the licensee knows, or should know, has a principal purpose of ensuring referrals by the licensee to a particular entity that, if the licensee directly made referrals to that entity, would be in violation of this section.

(2) It shall be unlawful for a physician to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for a referred evaluation or consultation.

(d) No claim for payment shall be presented by an entity to any individual, third-party payor, or other entity for any goods or services furnished pursuant to a referral prohibited under this section.

(e) A physician who refers to or seeks consultation from an organization in which the physician has a financial interest shall disclose this interest to the patient or if the patient is a minor, to the patient's parents or legal guardian in writing at the time of the referral.

(f) No insurer, self-insurer, or other payor shall pay a charge or lien for any goods or services resulting from a referral in violation of this section.

(g) A violation of subdivision (a) shall be a misdemeanor. The appropriate licensing board shall review the facts and circumstances of any conviction pursuant to subdivision (a) and take appropriate disciplinary action if the licensee has committed unprofessional conduct. Violations of this section may also be subject to civil penalties of up to five thousand dollars ($5,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney. A violation of subdivision (c), (d), (e), or (f) is a public offense and is punishable upon conviction by a fine not

exceeding fifteen thousand dollars ($15,000) for each violation and appropriate disciplinary action, including revocation of professional licensure, by the Medical Board of California or other appropriate governmental agency.

(Amended by Stats. 2011, Ch. 545, Sec. 2. Effective January 1, 2012.)

139.31. The prohibition of Section 139.3 shall not apply to or restrict any of the following:

(a) A physician may refer a patient for a good or service otherwise prohibited by subdivision (a) of Section 139.3 if the physician's regular practice is where there is no alternative provider of the service within either 25 miles or 40 minutes traveling time, via the shortest route on a paved road. A physician who refers to, or seeks consultation from, an organization in which the physician has a financial interest under this subdivision shall disclose this interest to the patient or the patient's parents or legal guardian in writing at the time of referral.

(b) A physician who has one or more of the following arrangements with another physician, a person, or an entity, is not prohibited from referring a patient to the physician, person, or entity because of the arrangement:

(1) A loan between a physician and the recipient of the referral, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, is adequately secured, and the loan terms are not affected by either party's referral of any person or the volume of services provided by either party.

(2) A lease of space or equipment between a physician and the recipient of the referral, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either party's referral of any person or the volume of services provided by either party.

(3) A physician's ownership of corporate investment securities, including shares, bonds, or other debt instruments that were purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ, do not base profit distributions or other transfers of value on the physician's referral of persons to the corporation, do not have a separate class or accounting for any persons or for any physicians who may refer persons to the corporation, and are in a corporation that had, at the end of the corporation's most recent fiscal year, total gross assets exceeding one hundred million dollars ($100,000,000).

(4) A personal services arrangement between a physician or an immediate family member of the physician and the recipient of the referral if the arrangement meets all of the following requirements:

(A) It is set out in writing and is signed by the parties.

(B) It specifies all of the services to be provided by the physician or an immediate family member of the physician.

(C) The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.

(D) A written notice disclosing the existence of the personal services arrangement and including information on where a person may go to file a complaint against the licensee or the immediate family member of the licensee, is provided to the following persons at the time any services pursuant to the arrangement are first provided:

(i) An injured worker who is referred by a licensee or an immediate family member of the licensee.

(ii) The injured worker's employer, if self-insured.

(iii) The injured worker's employer's insurer, if insured.

(iv) If the injured worker is known by the licensee or the recipient of the referral to be represented, the injured worker's attorney.

(E) The term of the arrangement is for at least one year.

(F) The compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties, except that if the services provided pursuant to the arrangement include medical services provided under Division 4, compensation paid for the services shall be subject to the official medical fee schedule promulgated pursuant to Section 5307.1 or subject to any contract authorized by Section 5307.11.

(G) The services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

(c) (1) A physician may refer a person to a health facility as defined in Section 1250 of the Health and Safety Code, to any facility owned or leased by a health facility, or to an outpatient surgical center, if the recipient of the referral does not compensate the physician for the patient referral, and any equipment lease arrangement between the physician and the referral recipient complies with the requirements of paragraph (2) of subdivision (b).

(2) Nothing shall preclude this subdivision from applying to a physician solely because the physician has an ownership or leasehold interest in an entire health facility or an entity that owns or leases an entire health facility.

(3) A physician may refer a person to a health facility for any service classified as an emergency under subdivision (a) or (b) of Section 1317.1 of the Health and Safety Code. For nonemergency outpatient diagnostic imaging services performed with equipment for which, when new, has a commercial retail price of four hundred thousand dollars ($400,000) or more, the referring physician shall obtain a service preauthorization from the insurer, or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(d) A physician compensated or employed by a university may refer a person to any facility owned or operated by the university, or for a physician service, to another physician employed by the university, provided that the facility or university does not compensate the referring physician for the patient referral. For nonemergency diagnostic imaging services performed with equipment that, when new, has a commercial retail price of four hundred thousand dollars ($400,000) or more, the referring physician shall obtain a service preauthorization from the insurer or self-insured employer. An oral authorization shall be memorialized in writing within five business days. In the case of a facility which is totally or partially owned by an entity other than the university, but which is staffed by university physicians, those physicians may not refer patients to the facility if the facility compensates the referring physician for those referrals.

(e) The prohibition of Section 139.3 shall not apply to any service for a specific patient that is performed within, or goods that are supplied by, a physician's office, or the office of a group practice. Further, the provisions of Section 139.3 shall not alter, limit, or expand a physician's ability to deliver, or to direct or supervise the delivery of, in-office goods or services according to the laws, rules, and regulations governing his or her scope of practice. With respect to diagnostic imaging services performed with equipment that, when new, had a commercial retail price of four hundred thousand dollars ($400,000) or more, or for

physical therapy services, or for psychometric testing that exceeds the routine screening battery protocols, with a time limit of two to five hours, established by the administrative director, the referring physician obtains a service preauthorization from the insurer or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(f) The prohibition of Section 139.3 shall not apply where the physician is in a group practice as defined in Section 139.3 and refers a person for services specified in Section 139.3 to a multispecialty clinic, as defined in subdivision (l) of Section 1206 of the Health and Safety Code. For diagnostic imaging services performed with equipment that, when new, had a commercial retail price of four hundred thousand dollars ($400,000) or more, or physical therapy services, or psychometric testing that exceeds the routine screening battery protocols, with a time limit of two to five hours, established by the administrative director, performed at the multispecialty facility, the referring physician shall obtain a service preauthorization from the insurer or self-insured employer. Any oral authorization shall be memorialized in writing within five business days.

(g) The requirement for preauthorization in Sections (c), (e), and (f) shall not apply to a patient for whom the physician or group accepts payment on a capitated risk basis.

(h) The prohibition of Section 139.3 shall not apply to any facility when used to provide health care services to an enrollee of a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(i) The prohibition of Section 139.3 shall not apply to an outpatient surgical center, as defined in paragraph (7) of subdivision (b) of Section 139.3, where the referring physician obtains a service preauthorization from the insurer or self-insured employer after disclosure of the financial relationship.

(j) The prohibition of Section 139.3 shall not apply to a physician's financial interest in a retailer of prescription drugs sold by a physical retail outlet commonly accessed by the public or a mail-order pharmacy serving a broad national or regional market, provided that the majority of the physician's practice, with regard to income, time, and number of patients, does not relate to occupational medicine and the physician receives no remuneration from the retailer of prescription drugs to market or otherwise solicit occupational injury or occupational disease patients.

(Amended by Stats. 2011, Ch. 545, Sec. 3. Effective January 1, 2012.)

139.32. (a) For the purpose of this section, the following definitions apply:

(1) "Financial interest in another entity" means, subject to subdivision (h), either of the following:

(A) Any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between the interested party and the other entity to which the employee is referred for services.

(B) An agreement, debt instrument, or lease or rental agreement between the interested party and the other entity that provides compensation based upon, in whole or in part, the volume or value of the services provided as a result of referrals.

(2) "Interested party" means any of the following:

(A) An injured employee.

(B) The employer of an injured employee, and, if the employer is insured, its insurer.

(C) A claims administrator, which includes, but is not limited to, a self-administered workers' compensation insurer, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured employer, a third-party claims administrator for an insurer, a self-insured employer, a joint powers authority, or a legally uninsured employer or a subsidiary of a claims administrator.

(D) An attorney-at-law or law firm that is representing or advising an employee regarding a claim for compensation under Division 4 (commencing with Section 3200).

(E) A representative or agent of an interested party, including either of the following:

(i) An employee of an interested party.

(ii) Any individual acting on behalf of an interested party, including the immediate family of the interested party or of an employee of the interested party. For purposes of this clause, immediate family includes spouses, children, parents, and spouses of children.

(F) A provider of any medical services or products.

(3) "Services" means, but is not limited to, any of the following:

(A) A determination regarding an employee's eligibility for compensation under Division 4 (commencing with Section 3200), that includes both of the following:

(i) A determination of a permanent disability rating under Section 4660.

(ii) An evaluation of an employee's future earnings capacity resulting from an occupational injury or illness.

(B) Services to review the itemization of medical services set forth on a medical bill submitted under Section 4603.2.

(C) Copy and document reproduction services.

(D) Interpreter services.

(E) Medical services, including the provision of any medical products such as surgical hardware or durable medical equipment.

(F) Transportation services.

(G) Services in connection with utilization review pursuant to Section 4610.

(b) All interested parties shall disclose any financial interest in any entity providing services.

(c) Except as otherwise permitted by law, it is unlawful for an interested party other than a claims administrator or a network service provider to refer a person for services provided by another entity, or to use services provided by another entity, if the other entity will be paid for those services pursuant to Division 4 (commencing with Section 3200) and the interested party has a financial interest in the other entity.

(d) (1) It is unlawful for an interested party to enter into an arrangement or scheme, such as a cross-referral arrangement, that the interested party knows, or should know, has a purpose of ensuring referrals by the interested party to a particular entity that, if the interested party directly made referrals to that other entity, would be in violation of this section.

(2) It is unlawful for an interested party to offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement to refer a person for services.

(e) A claim for payment shall not be presented by an entity to any interested party, individual, third-party payer, or other entity for any services furnished pursuant to a referral prohibited under this section.

(f) An insurer, self-insurer, or other payer shall not knowingly pay a charge or lien for any services resulting from a referral for services or use of services in violation of this section.

(g) (1) A violation of this section shall be misdemeanor. If an interested party is a corporation, any director or officer of the corporation who knowingly concurs in a violation of this section shall be guilty of a misdemeanor. The appropriate licensing authority for any person subject to this section shall review the facts and circumstances of any conviction pursuant to this section and take appropriate disciplinary action if the licensee has committed unprofessional conduct, provided that the appropriate licensing authority may act on its own discretion independent of the initiation or completion of a criminal prosecution. Violations of this section are also subject to civil penalties of up to fifteen thousand dollars ($15,000) for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney.

(2) For an interested party, a practice of violating this section shall constitute a general business practice that discharges or administers compensation obligations in a dishonest manner, which shall be subject to a civil penalty under subdivision (e) of Section 129.5.

(3) For an interested party who is an attorney, a violation of subdivision (b) or (c) shall be referred to the Board of Governors of the State Bar of California, which shall review the facts and circumstances of any violation pursuant to subdivision (b) or (c) and take appropriate disciplinary action if the licensee has committed unprofessional conduct.

(4) Any determination regarding an employee's eligibility for compensation shall be void if that service was provided in violation of this section.

(h) The following arrangements between an interested party and another entity do not constitute a "financial interest in another entity" for purposes of this section:

(1) A loan between an interested party and another entity, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, and is adequately secured, and the loan terms are not affected by either the interested party's referral of any employee or the volume of services provided by the entity that receives the referral.

(2) A lease of space or equipment between an interested party and another entity, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either the interested party's referral of any person or the volume of services provided by the entity that receives the referral.

(3) An interested party's ownership of the corporate investment securities of another entity, including shares, bonds, or other debt instruments that were purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ.

(i) The prohibitions described in this section do not apply to any of the following:

(1) Services performed by, or determinations of compensation issues made by, employees of an interested party in the course of that employment.

(2) A referral for legal services if that referral is not prohibited by the Rules of Professional Conduct of the State Bar.

(3) A physician's referral that is exempted by Section 139.31 from the prohibitions prescribed by Section 139.3.

(Added by Stats. 2012, Ch. 363, Sec. 6. Effective January 1, 2013.)

139.4. (a) The administrative director may review advertising copy to ensure compliance with Section 651 of the Business and Professions Code and may require qualified medical evaluators to maintain a file of all advertising copy for a period of 90 days from the date of its use. Any file so required to be maintained shall be available to the administrative director upon the administrative director's request for review.

(b) No advertising copy shall be used after its use has been disapproved by the administrative director and the qualified medical evaluator has been notified in writing of the disapproval.

(c) A qualified medical evaluator who is found by the administrative director to have violated any provision of this section may be terminated, suspended, or placed on probation.

(d) Proceedings to determine whether a violation of this section has occurred shall be conducted pursuant to Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) The administrative director shall adopt regulations governing advertising by physicians with respect to industrial injuries or illnesses.

(f) Subdivision (a) shall not be construed to alter the application of Section 651 of the Business and Professions Code.

(Amended by Stats. 2003, Ch. 639, Sec. 13. Effective January 1, 2004.)

139.43. (a) No person or entity shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement concerning services or benefits to be provided to an injured worker, that is paid for directly or indirectly by that person or entity and is false, misleading, or deceptive, or that omits material information necessary to make the statement therein not false, misleading, or deceptive.

(b) As soon as reasonably possible, but not later than January 1, 1994, the administrative director shall adopt regulations governing advertising by persons or entities other than physicians and attorneys with respect to services or benefits for injured workers. In promulgating regulations pursuant to this subdivision, the administrative director shall review existing regulations, including those adopted by the State Bar, to identify those regulatory approaches that may serve as a model for regulations required by this subdivision.

(c) A violation of subdivision (a) is a misdemeanor, punishable by incarceration in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or both.

(d) This section shall not apply to physicians or attorneys. It is the intent of the Legislature to exempt physicians and attorneys from this section because the conduct regulated by this section, with respect to physicians and attorneys, is governed by other provisions of law.

(Amended by Stats. 2004, Ch. 193, Sec. 138. Effective January 1, 2005.)

139.45. (a) In promulgating regulations pursuant to Sections 139.4 and 139.43, the administrative director shall take particular care to preclude any advertisements with respect to industrial injuries or illnesses that are false or mislead the public with respect to workers' compensation. In promulgating rules with respect to advertising, the State Bar and physician licensing boards shall also take particular care to achieve the same goal.

(b) For purposes of subdivision (a), false or misleading advertisements shall include advertisements that do any of the following:

(1) Contain an untrue statement.

(2) Contain any matter, or present or arrange any matter in a manner or format that is false, deceptive, or that tends to confuse, deceive, or mislead.

(3) Omit any fact necessary to make the statement made, in the light of the circumstances under which the statement is made, not misleading.

(4) Are transmitted in any manner that involves coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

(5) Entice a person to respond by the offering of any consideration, including a good or service but excluding free medical evaluations or treatment, that would be provided either at no charge or for less than market value. No free medical evaluation or treatment shall be offered for the purpose of defrauding any entity.

(Amended by Stats. 2003, Ch. 639, Sec. 14. Effective January 1, 2004.)

139.47. The Director of Industrial Relations shall establish and maintain a program to encourage, facilitate, and educate employers to provide early and sustained return to work after occupational injury or illness. The program shall do both of the following:

(a) Develop educational materials and guides, in easily understandable language in both print and electronic form, for employers, health care providers, employees, and labor unions. These materials shall address issues including, but not limited to, early return to work, assessment of functional abilities and limitations, development of appropriate work restrictions, job analysis, worksite modifications, assistive equipment and devices, and available resources.

(b) Conduct training for employee and employer organizations and health care providers concerning the accommodation of injured employees and the prevention of reinjury.

(Added by Stats. 2002, Ch. 6, Sec. 40. Effective January 1, 2003.)

139.48. (a) There is in the department a return-to-work program administered by the director, funded by one hundred twenty million dollars ($120,000,000) annually derived from non-General Funds of the Workers' Compensation Administration Revolving Fund, for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Moneys shall remain available for use by the return-to-work program without respect to the fiscal year.

(b) Eligibility for payments and the amount of payments shall be determined by regulations adopted by the director, based on findings from studies conducted by the director in consultation with the Commission on Health and Safety and Workers' Compensation. Determinations of the director shall be subject to review at the trial level of the appeals board upon the same grounds as prescribed for petitions for reconsideration.

(c) This section shall apply only to injuries sustained on or after January 1, 2013.

(Amended by Stats. 2013, Ch. 28, Sec. 37. Effective June 27, 2013.)

139.5. (a) (1) The administrative director shall contract with one or more independent medical review organizations and one or more independent bill review organizations to conduct reviews pursuant to Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 of Division 4. The independent review organizations shall be independent of any workers' compensation insurer or workers' compensation claims administrator doing business in this state. The administrative director may establish additional requirements, including conflict-of-interest standards, consistent with the purposes of Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 of Division 4, that an organization shall be required to meet in order to qualify as an independent review organization and to assist the division in carrying out its responsibilities.

(2) To enable the independent review program to go into effect for injuries occurring on or after January 1, 2013, and until the administrative director establishes contracts as otherwise specified by this section, independent review organizations under contract with the Department of Managed Health Care pursuant to Section 1374.32 of the Health and Safety Code may be designated by the administrative director to conduct reviews pursuant to Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 of Division 4. The administrative director may use an interagency agreement to implement the independent review process beginning January 1, 2013. The administrative director may initially contract directly with the same organizations that are under contract with the Department of Managed Health Care on substantially the same terms without competitive bidding until January 1, 2015.

(b) (1) The independent medical review organizations and the medical professionals retained to conduct reviews shall be deemed to be consultants for purposes of this section.

(2) There shall be no monetary liability on the part of, and no cause of action shall arise against, any consultant on account of any communication by that consultant to the administrative director or any other officer, employee, agent, contractor, or consultant of the Division of Workers' Compensation, or on account of any communication by that consultant to any person when that communication is required by the terms of a contract with the administrative director pursuant to this section and the consultant does all of the following:

(A) Acts without malice.

(B) Makes a reasonable effort to determine the facts of the matter communicated.

(C) Acts with a reasonable belief that the communication is warranted by the facts actually known to the consultant after a reasonable effort to determine the facts.

(3) The immunities afforded by this section shall not affect the availability of any other privilege or immunity which may be afforded by law. This section shall not be construed to alter the laws regarding the confidentiality of medical records.

(c) (1) An organization contracted to perform independent medical review or independent bill review shall be required to employ a medical director who shall be responsible for advising the contractor on clinical issues. The medical director shall be a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California.

(2) The independent review organization, any experts it designates to conduct a review, or any officer, director, or employee of the independent review organization shall not have any material professional, familial, or financial affiliation, as determined by the administrative director, with any of the following:

(A) The employer, insurer or claims administrator, or utilization review organization.

(B) Any officer, director, employee of the employer, or insurer or claims administrator.

(C) A physician, the physician's medical group, the physician's independent practice association, or other provider involved in the medical treatment in dispute.

(D) The facility or institution at which either the proposed health care service, or the alternative service, if any, recommended by the employer, would be provided.

(E) The development or manufacture of the principal drug, device, procedure, or other therapy proposed by the employee whose treatment is under review, or the alternative therapy, if any, recommended by the employer.

(F) The employee or the employee's immediate family, or the employee's attorney.

(d) The independent review organizations shall meet all of the following requirements:

(1) The organization shall not be an affiliate or a subsidiary of, nor in any way be owned or controlled by, a workers' compensation insurer, claims administrator, or a trade association of workers' compensation insurers or claims administrators. A board member, director, officer, or employee of the independent review organization shall not serve as a board member, director, or employee of a workers' compensation insurer or claims administrator. A board member, director, or officer of a workers' compensation insurer or claims administrator or a trade association of workers' compensation insurers or claims administrators shall not serve as a board member, director, officer, or employee of an independent review organization.

(2) The organization shall submit to the division the following information upon initial application to contract under this section and, except as otherwise provided, annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent review organization controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent review organization, as well as a statement regarding any past or present relationships the directors, officers, and executives may have with any employer, workers' compensation insurer, claims administrator, medical provider network, managed care organization, provider group, or board or committee of an employer, workers' compensation insurer, claims administrator, medical provider network, managed care organization, or provider group.

(E) (i) The percentage of revenue the independent review organization receives from expert reviews, including, but not limited to, external medical reviews, quality assurance reviews, utilization reviews, and bill reviews.

(ii) The names of any workers' compensation insurer, claims administrator, or provider group for which the independent review organization provides review services, including, but not limited to, utilization review, bill review, quality assurance review, and external medical review. Any change in this information shall be reported to the department within five business days of the change.

(F) A description of the review process, including, but not limited to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent medical review organization uses to identify and recruit medical professionals to review treatment and treatment recommendation decisions, the number of medical professionals credentialed, and the types of cases and areas of expertise that the medical professionals are credentialed to review.

(H) A description of how the independent review organization ensures compliance with the conflict-of-interest requirements of this section.

(3) The organization shall demonstrate that it has a quality assurance mechanism in place that does all of the following:

(A) Ensures that any medical professionals retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the medical professionals or bill reviewers are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions and the medical necessity of treatments or therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensures the independence of the medical professionals or bill reviewers retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensures adequate screening for conflicts of interest, pursuant to paragraph (5).

(4) Medical professionals selected by independent medical review organizations to review medical treatment decisions shall be licensed physicians, as defined by Section 3209.3, in good standing, who meet the following minimum requirements:

(A) The physician shall be a clinician knowledgeable in the treatment of the employee's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other law, the physician shall hold a nonrestricted license in any state of the United States, and for physicians and surgeons holding an M.D. or D.O. degree, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review. The independent medical review organization shall give preference to the use of a physician licensed in California as the reviewer.

(C) The physician shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions, taken or pending by any hospital, government, or regulatory body.

(D) Commencing January 1, 2014, the physician shall not hold an appointment as a qualified medical evaluator pursuant to Section 139.2.

(5) Neither the expert reviewer, nor the independent review organization, shall have any material professional, material familial, or material financial affiliation with any of the following:

(A) The employer, workers' compensation insurer or claims administrator, or a medical provider network of the insurer or claims administrator, except that an academic medical center under contract to the insurer or claims administrator to provide services to employees may qualify as an independent medical review organization provided it will not provide the service and provided the center is not the developer or manufacturer of the proposed treatment.

(B) Any officer, director, or management employee of the employer or workers' compensation insurer or claims administrator.

(C) The physician, the physician's medical group, or the independent practice association proposing the treatment.

(D) The institution at which the treatment would be provided.

(E) The development or manufacture of the treatment proposed for the employee whose condition is under review.

(F) The employee or the employee's immediate family.

(6) For purposes of this subdivision, the following terms shall have the following meanings:

(A) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) "Material financial affiliation" means any financial interest of more than 5 percent of total annual revenue or total annual income of an independent review organization or individual to which this subdivision applies. "Material financial affiliation" does not include payment by the employer to the independent review organization for the services required by the administrative director's contract with the independent review organization, nor does "material financial affiliation" include an expert's participation as a contracting medical provider where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(C) "Material professional affiliation" means any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent review organization. "Material professional affiliation" does not include affiliations that are limited to staff privileges at a health facility.

(e) The division shall provide, upon the request of any interested person, a copy of all nonproprietary information, as determined by the administrative director, filed with it by an independent review organization under contract pursuant to this section. The division may charge a fee to the interested person for copying the requested information.

(f) The Legislature finds and declares that the services described in this section are of such a special and unique nature that they must be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130 of the Government Code. The Legislature further finds and declares that the services described in this section are a new state function pursuant to paragraph (2) of subdivision (b) of Section 19130 of the Government Code.

(Amended by Stats. 2014, Ch. 71, Sec. 107. Effective January 1, 2015.)

139.6. (a) The administrative director shall establish and effect within the Division of Workers' Compensation a continuing program to provide information and assistance concerning the rights, benefits, and obligations of the workers' compensation law to employees and employers subject thereto. The program shall include, but not be limited to, the following:

(1) The preparation, publishing, and as necessary, updating, of guides to the California workers' compensation system for employees and employers. The guides shall detail, in easily understandable language, the rights and obligations of employees and employers, the procedures for obtaining benefits, and the means provided for resolving disputes. Separate guides may be prepared for employees and employers. The appropriate guide shall be provided to all labor and employer organizations known to the administrative director, and to any other person upon request.

(2) The preparation, publishing, and as necessary, updating, of a pamphlet advising injured workers of their basic rights under workers' compensation law, and informing them of rights under the Americans with Disabilities Act, and the provisions of the Fair Employment and Housing Act relating to individuals with a disability. The pamphlet shall be written in easily understandable language. The pamphlet shall be available in both English and Spanish, and shall include basic information concerning the circumstances under which injured employees are entitled to the various types of workers' compensation benefits, the protections against discrimination because of an injury, the procedures for resolving any disputes which arise, and the right to seek information and advice from an information and assistance officer or an attorney.

(b) In each district office of the division, the administrative director shall appoint an information and assistance officer, and any other deputy information and assistance officers as the work of the district office may require. The administrative director shall provide office facilities and clerical support appropriate to the functions of these information and assistance officers.

(c) Each information and assistance officer shall be responsible for the performance of the following duties:

(1) Providing continuing information concerning rights, benefits, and obligations under workers' compensation laws to injured workers, employers, lien claimants, and other interested parties.

(2) Upon request by the injured worker, assisting in the prompt resolution of misunderstanding, disputes, and controversies arising out of claims for compensation, without formal proceedings, in order that full and timely compensation benefits shall be furnished. In performing this duty, information and assistance officers shall not be responsible for reviewing applications for adjudication or declarations of readiness to proceed. This function shall be performed by workers' compensation judges. This function may also be performed by settlement conference referees upon delegation by the appeals board.

(3) Distributing any information pamphlets in English and Spanish as are prepared and approved by the administrative director to all inquiring injured workers and any other parties that may request copies of these pamphlets.

(4) Establishing and maintaining liaison with the persons located in the geographic area served by the district office, with other affected state agencies, and with organizations representing employees, employers, insurers, and the medical community.

(Amended by Stats. 1993, Ch. 121, Sec. 23. Effective July 16, 1993.)

Chapter 6. Occupational Safety and Health Standards Board

(Heading of Chapter 6 amended by Stats. 1973, Ch. 993.)

140. (a) There is in the Department of Industrial Relations, the Occupational Safety and Health Standards Board which consists of seven members who shall be appointed by the Governor. Two members shall be from the field of management, two members shall be from the field of labor, one member shall be from the field of occupational health, one member shall be from the field of occupational safety and one member shall be from the general public. Members representing occupational safety and health fields and the public member shall be selected from other than the fields of management or labor.

(b) Terms of office for members of the Industrial Safety Board shall expire 60 days after the effective date of the amendment of this section enacted at the 1973–74 Regular Session. Newly appointed members of the Occupational Safety and Health Standards Board shall assume their duties upon that date.

(c) The Governor shall designate the chairman of the board from the membership of the board. The person so designated shall hold the office of chairman at the pleasure of the Governor. The chairman shall designate a member of the board to act as chairman in his absence.

(d) As used in this chapter, "board" means the Occupational Safety and Health Standards Board.

(e) All references in this or any other code to the Industrial Safety Board shall be deemed to mean the Occupational Safety and Health Standards Board.

(Amended by Stats. 1973, Ch. 993.)

141. (a) The terms of office of the members of the board shall be four years and they shall hold office until the appointment and qualification of a successor. The terms of the members of the board first appointed shall expire as follows: three members, one representative from management, one representative from labor, and one representative from occupational health, on June 1, 1974; three members, one representative from management, one representative from labor, and one representative from occupational safety, on June 1, 1975; one member June 1, 1976. The terms shall thereafter expire in the same relative order. Vacancies occurring shall be filled by appointment to the unexpired term.

(b) Each member of the board shall receive one hundred dollars ($100) for each day of his or her actual attendance at meetings of the board, and other official business of the board, and his or her actual and necessary traveling expenses incurred in the performance of his or her duty as a member.

(Amended by Stats. 2004, Ch. 183, Sec. 254. Effective January 1, 2005.)

142. The Division of Occupational Safety and Health shall enforce all occupational safety and health standards adopted pursuant to this chapter, and those heretofore adopted by the Industrial Accident Commission or the Industrial Safety Board. General safety orders heretofore adopted by the Industrial Accident Commission or the Industrial Safety Board shall continue to remain in effect, but they may be amended or repealed pursuant to this chapter.

(Amended by Stats. 2002, Ch. 1124, Sec. 40. Effective September 30, 2002.)

142.1. The board shall meet at least monthly. The meetings shall be rotated throughout the state at locations designated by the chairman. All meetings held by the board shall be open and public. Written notice of all meetings and a proposed agenda shall be given to all persons who make request for the notice in writing to the board.

(Amended by Stats. 1985, Ch. 657, Sec. 1.)

142.2. At each of its meetings, the board shall make time available to interested persons to propose new or revised orders or standards appropriate for adoption pursuant to this chapter or other items concerning occupational safety and health. The board shall consider such proposed orders or standards and report its decision no later than six months following receipt of such proposals.

(Added by Stats. 1973, Ch. 993.)

142.3. (a) (1) The board, by an affirmative vote of at least four members, may adopt, amend or repeal occupational safety and health standards and orders. The board shall be the only agency in the state authorized to adopt occupational safety and health standards.

(2) The board shall adopt standards at least as effective as the federal standards for all issues for which federal standards have been promulgated under Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596) within six months of the promulgation date of the federal standards and which, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce.

(3) No standard or amendment to any standard adopted by the board that is substantially the same as a federal standard shall be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of this subdivision, "substantially the same" means identical to the federal standard with the exception of editorial and format differences needed to conform to other state laws and standards.

(4) If a federal standard is promulgated and no state standard that is at least as effective as the federal standard is adopted by the board within six months of the date of promulgation of the federal standard, the following provisions shall apply unless adoption of the state standard is imminent:

(A) If there is no existing state standard covering the same issues, the federal standard shall be deemed to be a standard adopted by the board and enforceable by the division pursuant to Section 6317. This standard shall not be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(B) If a state standard is in effect at the time a federal standard is promulgated covering the same issue or issues, the board may adopt the federal standard, or a portion thereof, as a standard enforceable by the division pursuant to Section 6317; provided, however, if a federal standard or portion thereof is adopted which replaces an existing state standard or portion thereof, the federal standard shall be as effective as the state standard or portion thereof. No adoption of or amendment to any federal standard, or portion thereof shall be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(C) Any state standard adopted pursuant to subparagraph (A) or (B) shall become effective at the time the standard is filed with the Secretary of State, unless otherwise provided, but shall not take effect before the effective date of the equivalent federal standard and shall remain in effect for six months unless readopted by the board for an additional six months or superseded by a standard adopted by the board pursuant to paragraph (2) of subdivision (a).

(D) Any standard adopted pursuant to subparagraph (A), (B), or (C), shall be published in Title 8 of the California Code of Regulations in a manner similar to any other standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of this section.

(b) The State Building Standards Commission shall codify and publish in a semiannual supplement to the California Building Standards Code, or in a more frequent supplement if required by federal law, all occupational safety and health standards that would otherwise meet the definition of a building standard described in Section 18909 of the Health and Safety Code adopted by the board in the State Building Standards Code without reimbursement from the board. These occupational safety and health standards may also be published by the Occupational Safety and Health Standards Board in other provisions in Title 8 of the California Code of Regulations prior to publication in the California Building Standards Code if that other publication

includes an appropriate identification of occupational safety and health standards contained in the other publication.

(c) Any occupational safety or health standard or order promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions for safe use or exposure. Where appropriate, these standards or orders shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with these hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in a manner as may be necessary for the protection of employees. In addition, where appropriate, the occupational safety or health standard or order shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his or her cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employee is adversely affected by this exposure.

(d) The results of these examinations or tests shall be furnished only to the Division of Occupational Safety and Health, the State Department of Health Services, any other authorized state agency, the employer, the employee, and, at the request of the employee, to his or her physician.

(Amended by Stats. 2002, Ch. 1124, Sec. 41. Effective September 30, 2002.)

142.4. (a) Occupational safety and health standards and orders shall be adopted, amended, or repealed as provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as modified by this chapter.

(b) If an emergency regulation is based upon an emergency temporary standard published in the Federal Register by the Secretary of Labor pursuant to Section 6(c)(1) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596; 29 U.S.C. Sec. 655(c)(1)), the 120-day period specified in Section 11346.1 of the Government Code shall be deemed not to expire until 120 days after a permanent standard is promulgated by the Secretary of Labor pursuant to Section 6(c)(3) of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 655(c)(3)).

(Amended by Stats. 2006, Ch. 538, Sec. 478. Effective January 1, 2007.)

142.7. (a) On or before October 1, 1987, the board shall adopt an occupational safety and health standard concerning hazardous substance removal work, so as to protect most effectively the health and safety of employees. The standard shall include, but not be limited to, requirements for all of the following:

(1) Specific work practices.

(2) Certification of all employees engaged in hazardous substance removal-related work, except that no certification shall be required for an employee whose only activity is the transportation of hazardous substances which are subject to the requirement for a certificate under Section 12804.1 of the Vehicle Code.

(3) Certification of supervisors with sufficient experience and authority to be responsible for hazardous substance removal work.

(4) Designation of a qualified person who shall be responsible for scheduling any air sampling, laboratory calibration of sampling equipment, evaluation of soil or other contaminated materials sampling results, and for conducting any equipment testing and evaluating the results of the tests.

(5) Requiring that a safety and health conference be held for all hazardous substance removal jobs before the start of actual work. The conference shall include representatives of the owner or contracting agency, the contractor, the employer, employees, and employee representatives, and shall include a discussion of the employer's safety and health program and the means, methods, devices, processes, practices, conditions, or operations which the employer intends to use in providing a safe and healthy place of employment.

(b) For purposes of this section, "hazardous substance removal work" means cleanup work at any of the following:

(1) A site where removal or remedial action is taken pursuant to either of the following:

(A) Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, regardless of whether the site is listed pursuant to Section 25356 of the Health and Safety Code.

(B) The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(2) A site where corrective action is taken pursuant to Section 25187 or 25200.10 of the Health and Safety Code or the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.).

(3) A site where cleanup of a discharge of a hazardous substance is required pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(4) A site where removal or remedial action is taken because a hazardous substance has been discharged or released in an amount that is reportable pursuant to Section 13271 of the Water Code or the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). "Hazardous substance removal work" does not include work related to a hazardous substance spill on a highway.

(c) Until the occupational safety and health standard required by subdivision (a) is adopted by the board and becomes effective, the occupational safety and health standard concerning hazardous substance removal work shall be the standard adopted by the federal government and codified in Section 1910.120 of Title 29 of the Code of Federal Regulations. In addition, before actual work is started on a hazardous substance removal job, a safety and health conference shall be held that shall include the participants and involve a discussion of the subjects described in paragraph (5) of subdivision (a).

(Amended by Stats. 1990, Ch. 1188, Sec. 1. Effective September 24, 1990.)

143. (a) Any employer may apply to the board for a permanent variance from an occupational safety and health standard, order, special order, or portion thereof, upon a showing of an alternate program, method, practice, means, device, or process which will provide equal or superior safety for employees.

(b) The board shall issue such variance if it determines on the record, after opportunity for an investigation where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The variance so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question.

(c) The board is authorized to grant a variance from any standard or portion thereof whenever it determines such variance is necessary to permit an employer to participate in an experiment approved by the director designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(d) A permanent variance may be modified or revoked upon application by an employer, employees, or the division, or by the board on its own motion, in the manner prescribed for its issuance under this section at any time.

(Amended by Stats. 1974, Ch. 1284.)

143.1. The board shall conduct hearings on such requests for a permanent variance after employees or employee representatives are properly notified and given an opportunity to appear. All board decisions on permanent variance requests shall be final except for any rehearing or judicial review provided for by law.

(Added by Stats. 1973, Ch. 993.)

143.2. The board, acting as a whole, may adopt, amend, or repeal rules of practice and procedure pertaining to hearings on applications for permanent variances, variance appeals, and other matters within its jurisdiction. All rules of practice and procedure amendments thereto, or repeal thereof, shall be made in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2004, Ch. 183, Sec. 255. Effective January 1, 2005.)

144. (a) The authority of any agency, department, division, bureau or any other political subdivision other than the Division of Occupational Safety and Health to assist in the administration or enforcement of any occupational safety or health standard, order, or rule adopted pursuant to this chapter shall be contained in a written agreement with the Department of Industrial Relations or an agency authorized by the department to enter into such agreement.

(b) No such agreement shall deprive the Division of Occupational Safety and Health or other state agency to which authority has been delegated of any power or authority of the state agency.

(c) Such an agreement may provide for the right of access of an authorized representative of the designated agency to enter any place of employment which is under the jurisdiction of the Division of Occupational Safety and Health.

(d) If any representative of an agency operating under such an agreement becomes aware of an imminent hazard, he shall notify the employer and affected employees of the hazard and immediately notify the Division of Occupational Safety and Health.

(e) Nothing in this section shall affect or limit the authority of any state or local agency as to any matter other than the enforcement of occupational safety and health standards adopted by the board; however, nothing herein shall limit or reduce the authority of local agencies to adopt and enforce higher standards relating to occupational safety and health for their own employees.

(Amended by Stats. 1979, Ch. 72.)

144.5. (a) The Division of Occupational Safety and Health in connection with the enforcement of occupational safety and health standards adopted pursuant to this chapter shall do all of the following:

(1) Conduct inspections or investigations related to specific workplaces for the evaluation of occupational health problems or environmental conditions which may be harmful to the health of employees.

(2) Upon request of any employer or employee, or on its own initiative, conduct special investigations or studies of occupational health problems which are unrelated to a specific enforcement action to the extent the circumstances indicate and priorities permit.

(3) Provide a continuing program of training for safety engineers of the Division of Occupational Safety and Health in the recognition of health hazards, in dealing with such hazards that do not require specialized competence or equipment and in acquainting them with the skills available from the State Department of Health Services and local health agencies.

(b) (1) When requested by a local health department, the Division of Occupational Safety and Health shall enter into a written agreement with such local health department to conduct inspections and evaluations of occupational health problems, including environmental and sanitary conditions, in places of employment.

(2) Any such agreement shall be subject to the provisions of Section 144. It shall be entered into only after a finding that the local health department can meet the necessary standards of performance for inspections and evaluations to be conducted pursuant to the agreement.

(3) Such agreement shall not be binding upon either party unless and until it has been fully approved by the United States Department of Labor.

(4) Such agreements shall be completed by the Division of Occupational Safety and Health and submitted for approval to the United States Department of Labor not later than six months from the date of request by the local health department.

(5) Inspection services performed under the agreement shall be conducted pursuant to the occupational safety and health standards adopted pursuant to this chapter.

(Amended by Stats. 1979, Ch. 72.)

144.6. In promulgating standards dealing with toxic materials or harmful physical agents, the board shall adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(Amended by Stats. 1976, Ch. 963.)

144.7. (a) The board shall, no later than January 15, 1999, adopt an emergency regulation revising the bloodborne pathogen standard currently set forth in Section 5193 of Title 8 of the California Code of Regulations in accordance with subdivision (b). Following adoption of the emergency regulation, the board shall complete the regulation adoption process and shall formally adopt a regulation embodying a bloodborne pathogen standard meeting the requirements of subdivision (b), which regulation shall become operative no later than August 1, 1999. Notwithstanding Section 11346.1 of the Government Code, the emergency regulation adopted pursuant to this subdivision shall

remain in effect until the nonemergency regulation becomes operative or until August 1, 1999, whichever first occurs.

(b) The board shall adopt a standard, as described in subdivision (a), to be developed by the Division of Occupational Safety and Health. The standard shall include, but not be limited to, the following:

(1) A revised definition of "engineering controls" that includes sharps injury prevention technology including, but not limited to, needleless systems and needles with engineered sharps injury protection, which shall be defined in the standard.

(2) A requirement that sharps injury prevention technology specified in paragraph (1) be included as engineering or work practice controls, except in cases where the employer or other appropriate party can demonstrate circumstances in which the technology does not promote employee or patient safety or interferes with a medical procedure. Those circumstances shall be specified in the standard, and shall include, but not be limited to, circumstances where the technology is medically contraindicated or not more effective than alternative measures used by the employer to prevent exposure incidents.

(3) A requirement that written exposure control plans include an effective procedure for identifying and selecting existing sharps injury prevention technology of the type specified in paragraph (1).

(4) A requirement that written exposure control plans be updated when necessary to reflect progress in implementing the sharps injury prevention technology specified in paragraph (1).

(5) A requirement that information concerning exposure incidents be recorded in a sharps injury log, including, but not limited to, the type and brand of device involved in the incident.

(c) The Division of Occupational Safety and Health may consider and propose for adoption by the board additional revisions to the bloodborne pathogen standards to prevent sharps injuries or exposure incidents including, but not limited to, training requirements and measures to increase vaccinations.

(d) The Division of Occupational Safety and Health and the State Department of Health Services shall jointly compile and maintain a list of existing needleless systems and needles with engineered sharps injury protection, which shall be available to assist employers in complying with the requirements of the bloodborne pathogen standard adopted pursuant to this section. The list may be developed from existing sources of information, including, but not limited to, the federal Food and Drug Administration, the federal Centers for Disease Control, the National Institute of Occupational Safety and Health, and the United States Department of Veterans Affairs.

(Amended by Stats. 2001, Ch. 370, Sec. 2. Effective January 1, 2002.)

144.8. (a) As used in this section the following definitions shall apply:

(1) "Antineoplastic drug" means a chemotherapeutic agent that controls or kills cancer cells.

(2) "NIOSH" means the National Institute for Occupational Safety and Health.

(b) The board shall adopt an occupational safety and health standard for the handling of antineoplastic drugs in health care facilities regardless of the setting. In developing the standard, the board shall consider input from hospitals, practicing physicians from impacted specialties, including oncology, organizations representing health care personnel, including registered nurses and pharmacists, and other stakeholders, and shall determine a reasonable time for facilities to implement new requirements imposed by the adopted standard. The standard, to the extent feasible, shall be consistent with and not exceed recommendations in the NIOSH 2004 alert entitled "Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Health Care Settings," as updated in 2010. The standard may incorporate applicable updates and changes to NIOSH guidelines.

(Added by Stats. 2013, Ch. 678, Sec. 2. Effective January 1, 2014.)

145. The board may employ necessary assistants, officers, experts, and such other employees as it deems necessary. All such personnel of the board shall be under the supervision of the chairman of the board or an executive officer to whom he delegates such responsibility. All such personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for the one exempt deputy or employee allowed by subdivision (e) of Section 4 of Article XXIV of the California Constitution.

(Repealed and added by Stats. 1973, Ch. 993.)

145.1. The board and its duly authorized representatives in the performance of its duties shall have the powers of a head of a department as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1973, Ch. 993.)

146. In the conduct of hearings related to permanent variances, the board and its representatives are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but shall conduct the hearings in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Section 11513 of, the Government Code. A full and complete record shall be kept of all proceedings.

(Amended by Stats. 1995, Ch. 938, Sec. 72.8. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)

147. The board shall refer to the Division of Occupational Safety and Health for evaluation any proposed occupational safety or health standard or variance from adopted standards received by the board from sources other than the division. The division shall submit a report on the proposed standard or variance within 60 days of receipt thereof.

(Amended by Stats. 1979, Ch. 72.)

147.1. In connection with the development and promulgation of occupational health standards the Division of Occupational Safety and Health shall perform all of the following functions:

(a) Analyze proposed and new federal occupational health standards, evaluate their impact on California, determine any necessity for their modification, and present proposed standards to the board in sufficient time for the board to conduct hearings and adopt standards within the time required.

(b) Maintain liaison with the National Institute of Occupational Safety and Health and the federal Occupational Safety and Health Administration in the development of recommended federal standards and when appropriate provide representation on federal advisory committees dealing with the development of occupational health standards.

(c) On occupational health issues not covered by federal standards maintain surveillance, determine the necessity for standards, develop and present proposed standards to the board.

(d) Evaluate any proposed occupational health standard or application for a variance of an occupational health standard received by the board, and submit a report to the board on the proposed standard or variance within 60 days of receipt thereof.

(e) Appear and testify at board hearings and other public proceedings involving occupational health matters.

(Amended by Stats. 1979, Ch. 72.)

147.2. (a) As used in this section, "Hazard Evaluation System and Information Service" or "HESIS" means the repository established pursuant to subdivision (b).

(b) In accordance with Chapter 2 (commencing with Section 6350) of Part 1 of Division 5 of this code and Section 105175 of the Health and Safety Code, the Department of Industrial Relations, by interagency agreement with the State Department of Public Health, shall establish a repository of current data on toxic materials and harmful physical agents in use or potentially in use in places of employment in the state, known as the Hazard Evaluation System and Information Service, or HESIS.

(c) HESIS shall fulfill all of the following functions:

(1) Provide reliable information of practical use to employers, employees, representatives of employees, and other governmental agencies on the possible hazards to employees of exposure to toxic materials or harmful physical agents.

(2) Collect and evaluate toxicological and epidemiological data and any other information that may be pertinent to establishing harmful effects on health of exposure to toxic materials or harmful physical agents. Nothing in this subdivision shall be construed as authorizing HESIS to require employers, other than chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, to report any information not otherwise required by law.

(3) When there is new scientific or medical information and the Chief of HESIS, in consultation with the Director of Industrial Relations and the Chief of the Division of Environmental and Occupational Disease Control in the State Department of Public Health, determines that a substance may be in use in a place of employment, may pose a hazard under a reasonable anticipated condition of use, and potentially poses a serious new or unrecognized health hazard to an employee, including, but not limited to, cancer, reproductive or developmental harm, organ system impairment, or death, chemical manufacturers, formulators, suppliers, distributors, importers, and their agents, as specified in subparagraph (A), shall provide to HESIS the names and addresses of their customers who have purchased certain chemicals, as specified by HESIS, or commercial products containing those chemicals and information related to those shipments, including the quantities and dates of shipments, and the proportion of a specified chemical within a mixture containing the specified chemical, upon written request by HESIS, for every product the final destination of which may be a place of employment in California. This paragraph shall not apply to a retail seller of the substance, whether sold individually or as part of a commercial product to the public. The following shall apply to this paragraph:

(A) On or after January 1, 2016, the information requested shall include current and past customers for not more than a one-year period prior to the date the request is issued. The information shall be provided within a reasonable timeframe, not to exceed 30 calendar days from the date the request is issued. The information shall be provided in a format specified by the State Department of Public Health but consistent with the responding entity's current data system.

(B) Unless, pursuant to other law or regulation the following persons, any other person, or any governmental entity is required to publicly disclose the following information, the names and addresses of customers, the quantities and dates of shipments, and the proportion of a specified chemical within a mixture provided by chemical manufacturers, formulators, suppliers, distributors, importers, and their agents pursuant to this paragraph shall be considered confidential and, except as specified in this subparagraph, exempt from public disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). HESIS may disclose that information to officers or employees of the State Department of Public Health, to officers or employees of the state who are responsible for carrying out the purposes of Division 5 (commencing with Section 6300), or to the state agencies of the state officers specified in paragraphs (5) and (6). Any officer, employee, or agency to which the information is disclosed shall be subject to this subparagraph.

(C) The State Department of Public Health shall be entitled to reimbursement of attorney's fees and costs incurred in seeking an injunction to enforce this paragraph.

(4) Recommend to the Chief of the Division of Occupational Safety and Health Administration that an occupational safety and health standard be developed whenever it has been determined that a substance in use or potentially in use in places of employment is potentially toxic at the concentrations or under the conditions used.

(5) Notify the Director of Pesticide Regulation of any information developed by HESIS that is relevant to carrying out his or her responsibilities under Chapters 2 (commencing with Section 12751) and 3 (commencing with Section 14001) of Division 7 of the Food and Agricultural Code.

(6) Notify the Secretary for Environmental Protection of any information developed by HESIS that is relevant to carrying out his or her responsibilities.

(d) The Director of Industrial Relations shall appoint an advisory committee to HESIS. The advisory committee shall consist of four representatives from labor, four representatives from management, four active practitioners in the occupational health field, and three persons knowledgeable in biomedical statistics or information storage and retrieval systems. The advisory committee shall meet on a regular basis at the request of the director. The committee shall be consulted by, and shall advise the director at each phase of the structuring and functioning of the repository and alert system with regard to, the procedures, methodology, validity, and practical utility of collecting, evaluating, and disseminating information concerning hazardous substances, consistent with the primary goals and objectives of the repository.

(e) Nothing in this section shall be construed to limit the ability of the State Department of Public Health to propose occupational safety and health standards to the Occupational Safety and Health Standards Board.

(f) Policies and procedures shall be developed to assure, to the extent possible, that HESIS uses and does not duplicate the resources of the federal government and other states.

(g) On or before December 31 of each year, the Department of Industrial Relations shall submit a report to the Legislature detailing the implementation and operation of HESIS including, but not limited to, the amount and source of funds allocated and spent on repository activities, the toxic materials and harmful physical agents investigated during the past year and recommendations made concerning them, actions taken to inform interested persons of the possible hazards of exposure to toxic

materials and harmful physical agents, and any recommendations for legislative changes relating to the functions of HESIS.

(Amended by Stats. 2014, Ch. 830, Sec. 2. Effective January 1, 2015.)

147.4. (a) By January 1, 2016, the department shall convene an advisory committee to evaluate whether changes are needed to align the general industry safety orders in Sections 3403 to 3411, inclusive, of Article 10.1 (commencing with Section 3401) of Group 2 of Subchapter 7 of Chapter 4 of Article 8 of Division 1 of Title 8 of the California Code of Regulations with the applicable and most recently promulgated standards of the National Fire Protection Association. The committee shall be composed of parties in both management and labor, represent a cross section of the fire protection industry and community, and be competent and knowledgeable regarding personal protective clothing and equipment for firefighters and firefighting practices generally.

(b) By July 1, 2016, the advisory committee shall present its findings and recommendations for consideration by the board. No later than July 1, 2017, the board shall render a decision regarding the adoption of changes to the general industry safety orders in Sections 3403 to 3411, inclusive, of Article 10.1 (commencing with Section 3401) of Group 2 of Subchapter 7 of Chapter 4 of Article 8 of Division 1 of Title 8 of the California Code of Regulations, or other applicable standards and regulations, in order to maintain alignment with the applicable National Fire Protection Association standards.

(c) Beginning July 1, 2018, and every five years thereafter, the board, in consultation with the department, shall complete a comprehensive review of all revisions to National Fire Protection Association standards pertaining to personal protective equipment covered by the general industry safety orders in Sections 3403 to 3411, inclusive, of Article 10.1 (commencing with Section 3401) of Group 2 of Subchapter 7 of Chapter 4 of Article 8 of Division 1 of Title 8 of the California Code of Regulations. If the review finds that the revisions to applicable National Fire Protection Association standards provide a greater degree of personal protection than the safety orders, the board shall consider modifying existing safety orders and shall render a decision regarding the adoption of necessary changes to safety orders, or other applicable standards and regulations, no later than July 1 of the subsequent year, in order to maintain alignment of the safety orders with the applicable National Fire Protection Association standards.

(Added by Stats. 2014, Ch. 811, Sec. 1. Effective January 1, 2015.)

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

(Added by Stats. 2015, Ch. 689, Sec. 7. Effective January 1, 2016.)

147.6. (a) By March 1, 2018, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of licensees under Division 10 (commencing with Section 26000) of the Business and Professions Code, including but not limited to, whether specific requirements are needed to address exposure to second-hand marijuana smoke by employees at facilities where on-site consumption of marijuana is permitted under subdivision (d) of Section 26200 of the Business and Professions Code, and whether specific requirements are needed to address the potential risks of combustion, inhalation, armed robberies or repetitive strain injuries.

(b) By October 1, 2018, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By October 1, 2018, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

(Added November 8, 2016, by initiative Proposition 64, Sec. 6.2.)

Chapter 6.5. Occupational Safety and Health Appeals Board

(Chapter 6.5 added by Stats. 1973, Ch. 993.)

148. (a) There is in the Department of Industrial Relations the Occupational Safety and Health Appeals Board, consisting of three members appointed by the Governor, subject to the approval of the Senate. One member shall be from the field of management, one shall be from the field of labor and one member shall be from the general public. The public member shall be chosen from other than the fields of management and labor. Each member of the appeals board shall devote his full time to the performance of his duties.

(b) The chairman and each member of the appeals board shall receive the annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The Governor shall designate the chairman of the appeals board from the membership of the appeals board. The person so designated shall hold the office of chairman at the pleasure of the Governor. The chairman shall designate a member of the appeals board to act as chairman in his absence.

(Added by Stats. 1973, Ch. 993.)

148.1. Each member of the appeals board shall serve for a term of four years and until his successor is appointed and qualifies. The terms of the first three members appointed to the appeals board shall expire on the second, third, and fourth January 15th following the date of the appointment of the first appointed member. A vacancy shall be filled by the Governor, subject to the approval of the Senate by appointment for the unexpired term.

(Added by Stats. 1973, Ch. 993.)

148.2. The appeals board may employ necessary assistants, officers, experts, hearing officers, and such other employees as it deems necessary. All such personnel of the appeals board shall be under the supervision of the chairman of the appeals board or an executive officer to whom the chairman delegates such responsibility. All such personnel shall be appointed pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except for the one exempt deputy or employee allowed by subdivision (e) of Section 4 of Article XXIV of the California Constitution. The salaries of the hearing officers shall be fixed by the State Personnel Board at a rate comparable to that of other referees or hearing officers in state service whose duties and responsibilities are comparable, without regard to whether such other positions have membership in the State Bar of California as a prerequisite to appointment.

(Added by Stats. 1973, Ch. 993.)

148.4. All decisions and orders of the appeals board shall be in writing.

(Added by Stats. 1973, Ch. 993.)

148.5. A decision of the appeals board is final, except for any rehearing or judicial review as permitted by Chapter 4 (commencing with Section 6600) of Part 1 of Division 5.

(Added by Stats. 1973, Ch. 993.)

148.6. A decision of the appeals board is binding on the director and the Division of Occupational Safety and Health with respect to the parties involved in the particular appeal. The director shall have the right to seek judicial review of an appeals board decision irrespective of whether or not he or she appeared or participated in the appeal to the appeals board or its hearing officer.

(Amended by Stats. 1989, Ch. 1360, Sec. 101.)

148.7. The appeals board, acting as a whole, may adopt, amend, or repeal rules of practice and procedure pertaining to hearing appeals and other matters falling within its jurisdiction. All such rules, amendments thereto, or repeals thereof shall be made in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1982, Ch. 454, Sec. 130.)

148.8. The appeals board and its duly authorized representatives in the performance of its duties shall have the powers of a head of a department as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, except for Section 11185 of the Government Code.

(Added by Stats. 1973, Ch. 993.)

148.9. Decisions of the appeals board shall be made by a majority of the appeals board, except as otherwise expressly provided.

(Added by Stats. 1973, Ch. 993.)

149. The chairman of the appeals board may authorize its executive officer to act as deputy appeals board member, and may delegate authority and duties to the executive officer in the event of the absence of a member of the appeals board.

(Added by Stats. 1973, Ch. 993.)

149.5. The appeals board may award reasonable costs, including attorney's fees, consultant's fees, and witness' fees, not to exceed five thousand dollars ($5,000) in the aggregate, to any employer who appeals a citation resulting from an inspection or investigation conducted on or after January 1, 1980, issued for violation of an occupational safety and health standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1, if (1) either the employer prevails in the appeal, or the citation is withdrawn, and (2) the appeals board finds that the issuance of the citation was the result of arbitrary or capricious action or conduct by the division.

The appeals board shall adopt rules of practice and procedure to implement this section.

The payment of costs pursuant to this section shall be from funds in the regular operating budget of the division. The division shall show in its proposed budget for each fiscal year the following information with respect to the prior fiscal year:

(a) The total costs paid.

(b) The number of cases in which costs were paid.

(Added by Stats. 1979, Ch. 1077.)

Chapter 7. Labor Statistics and Research

(Heading of Chapter 7 amended by Stats. 2012, Ch. 46, Sec. 82.)

150. (a) The department shall collect, compile, and present facts and statistics relating to the condition of labor in the state, including information as to cost of living, labor supply and demand, industrial relations, industrial disputes, industrial accidents and safety, labor productivity, sanitary and other conditions, prison labor, and such other matters in relation to labor as the Director of Industrial Relations deems desirable.

(b) To the extent not in conflict with this or any other section, on the date this subdivision becomes operative, the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 1 (commencing with Section 14000) and Subchapter 2 (commencing with Section 14900) of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Occupational Safety and Health and the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 3 (commencing with Section 16000) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Labor Standards Enforcement.

(Amended by Stats. 2012, Ch. 46, Sec. 83. Effective June 27, 2012.)

151. (a) The department shall conduct an annual survey of the ethnic derivation of the individuals who are parties to apprentice agreements described in Section 3077. In conducting this survey, the division shall use any pertinent data which the federal government may provide to avoid duplication of effort.

(b) The Division of Apprenticeship Standards shall cooperate in the accomplishment of the survey required by this section. The occasion of this survey may be used to gather such additional current data as may be of benefit to apprenticeship programs.

(c) Data gathered pursuant to this section shall not be evidence per se of an unlawful employment practice.

(d) Nothing in this section shall be construed to authorize any state agency to require an employer to employ a specified percentage of individuals of any particular ethnic derivation irrespective of such individuals' qualifications for employment.

(Amended by Stats. 2012, Ch. 46, Sec. 84. Effective June 27, 2012.)

152. The Director of Industrial Relations and authorized employees of the department may issue subpoenas to compel the attendance of witnesses and production of books, papers, and records; administer oaths; examine witnesses under oath; take the verification or proof of written instruments; and take depositions and affidavits for the purpose of carrying out the provisions of this code and performing the duties required by this chapter. They shall have free access to all places of labor. Any person, or agent or officer thereof, who willfully neglects or refuses to furnish statistics requested by the division, which are in his or her possession, or under his or her control, or who refuses to admit the director or his or her authorized employee to a place of labor, is guilty of a misdemeanor. The director may direct the chief and the employees of other divisions of the department to transmit any statistical information in their possession, or to conduct investigations and otherwise assist in the gathering of whatever statistics the director deems desirable.

(Amended by Stats. 2012, Ch. 46, Sec. 85. Effective June 27, 2012.)

153. Except as provided in Section 151 no use shall be made in the statistical or other reports prepared pursuant to this chapter of the names of persons supplying the information required under this code. Any agent or employee of the department who violates this section is guilty of a misdemeanor.

(Amended by Stats. 2012, Ch. 46, Sec. 86. Effective June 27, 2012.)

156. An annual report containing statistics on California work injuries and occupational diseases and fatalities by industry classifications shall be completed and published by the department no later than December 31 of the following calendar year. All of the reports and statistics shall be available to the public.

(Amended by Stats. 2012, Ch. 46, Sec. 87. Effective June 27, 2012.)

Chapter 7.5. Division of Occupational Safety and Health

(Heading of Chapter 7.5 amended by Stats. 1980, Ch. 676.)

175. The Division of Occupational Safety and Health shall be the lead agency in providing for public health and safety as well as worker health and safety in the construction, maintenance, and operation of any liquefied petroleum gas storage facility, other than a facility owned or maintained by a public utility, having a capacity of 100,000 barrels or more, including storage vessels, and related piping, pumping, distribution, and transfer apparatus. As the lead agency, the division shall request any state or local agency having statutory public health and safety jurisdiction over any part of the construction, maintenance, or operation of any such liquefied petroleum gas storage facility, other than a facility owned or maintained by a public utility, to exercise its statutory jurisdiction in relation to such facility, and shall report to the Legislature any instance in which such jurisdiction was not exercised.

(Amended by Stats. 1980, Ch. 676.)

176. (a) The Legislature hereby finds and declares that the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, was enacted in 1973 to provide for the removal of language barriers that prevent the people of this state who are not proficient in English from effectively accessing government services and otherwise communicating with their government.

The Legislature further finds and declares that limited-English-proficient individuals will benefit from increased language-based access to the programs and services of the Division of Occupational Safety and Health.

The Legislature further finds and declares that federal statistics show that from 1996 to 2000, while overall worker fatalities dropped 14 percent, immigrant worker fatalities rose 17 percent. Immigrant workers die on the job at higher rates because they frequently work in more dangerous industries with little or no training. Language barriers compound the problem because training and warning signs are often only in English.

(b) As used in this section, a "public contact position" means any position responsible for responding to telephone or in-office inquiries or taking complaints from the general public regarding matters pertaining to occupational safety and health.

(c) As used in the section, an "investigative position" means any position responsible for investigating complaints, injuries, or deaths related to occupational safety and health.

(d) As used in this section, "limited-English-proficient" refers to persons who speak English less than "very well," in accordance with United States Census data.

(e) The division shall make all efforts to ensure that limited-English-proficient persons can communicate effectively with the division. Examples of potential measures include, but are not limited to, the hiring of bilingual persons in public contact positions and investigative positions, the use of contract based interpreters, and the use of telephone-based interpretation services. Nothing contained in this section relieves the division of its separate obligations under the Dymally-Alatorre Bilingual Services Act, Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, or any other state or federal laws requiring the provision of its services in languages other than English.

(f) On July 30, 2004, the Division of Occupational Safety and Health shall issue a progress report to the Legislature on the implementation of this section that shall, at a minimum, include all of the following:

(1) The most recent information provided to the California State Personnel Board pursuant to Section 7299.4 of the Government Code.

(2) The number of bilingual employees in public contact and investigative positions in each local office of the division and the languages they speak, other than English.

(3) A description of any centralized system or other resources for providing translation and interpretation services within the division.

(4) A description of any quality control measures or evaluations undertaken by the division to evaluate whether limited-English-proficient persons are able to communicate effectively with the division.

(5) A description of any means, such as contracted interpreters, telephone-based interpretation services, or video conferencing, used by the division to communicate with individuals who are limited-English-proficient in the event that bilingual employees in public contact or investigative positions are not available, and the frequency in which these services were used by the division during the most recent fiscal year.

(Amended by Stats. 2003, Ch. 62, Sec. 203. Effective January 1, 2004.)

Division 2. Employment Regulation And Supervision

(Division 2 enacted by Stats. 1937, Ch. 90.)

Part 1. Compensation

(Part 1 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Payment of Wages

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

Article 1. General Occupations

(Article 1 enacted by Stats. 1937, Ch. 90.)

200. As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

(Enacted by Stats. 1937, Ch. 90.)

200.5. (a) Notwithstanding any provision of this code or Section 340 of the Code of Civil Procedure, to collect a civil penalty, fee, or penalty fee under this division, the Division of Labor Standards Enforcement shall commence an action within three years from the date the penalty or fee became final. Upon commencement of an action, the clerk of the superior court shall enter judgment immediately in conformity therewith.

(b) This section applies only to penalty assessments or fees that became final on or after the effective date of the act adding this section.

(c) For purposes of this section, "commence an action" means to file a request for entry of judgment on a civil penalty or fee with the clerk of the superior court of the relevant county.

(d) For purposes of this section, "final" means the time to appeal has expired and there is no appeal pending.

(Added by Stats. 2011, Ch. 655, Sec. 3. Effective January 1, 2012.)

201. (a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided, at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's discharge from employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when the state employer discharges an employee, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year. An employee electing to defer payment into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(Amended by Stats. 2002, Ch. 40, Sec. 6. Effective May 16, 2002.)

201.3. (a) For purposes of this section, the following definitions apply:

(1) "Temporary services employer" means an employing unit that contracts with clients or customers to supply workers to perform services for the clients or customers and that performs all of the following functions:

(A) Negotiates with clients and customers for matters such as the time and place where the services are to be provided, the type of work, the working conditions, and the quality and price of the services.

(B) Determines assignments or reassignments of workers, even if workers retain the right to refuse specific assignments.

(C) Retains the authority to assign or reassign a worker to another client or customer when the worker is determined unacceptable by a specific client or customer.

(D) Assigns or reassigns workers to perform services for clients or customers.

(E) Sets the rate of pay of workers, whether or not through negotiation.

(F) Pays workers from its own account or accounts.

(G) Retains the right to hire and terminate workers.

(2) "Temporary services employer" does not include any of the following:

(A) A bona fide nonprofit organization that provides temporary service employees to clients.

(B) A farm labor contractor, as defined in subdivision (b) of Section 1682.

(C) A garment manufacturing employer, which, for purposes of this section, has the same meaning as "contractor," as defined in subdivision (d) of Section 2671.

(3) "Employing unit" has the same meaning as defined in Section 135 of the Unemployment Insurance Code.

(4) "Client" and "customer" means the person with whom a temporary services employer has a contractual relationship to provide the services of one or more individuals employed by the temporary services employer.

(b) (1) (A) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.

(B) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer in the security services industry is a security guard who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, is employed by a private patrol operator licensed pursuant to that chapter, and is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any workweek, as

defined under Section 500, shall be due and payable not later than the regular payday of the following workweek.

(2) If an employee of a temporary services employer is assigned to work for a client on a day-to-day basis, that employee's wages are due and payable at the end of each day, regardless of when the assignment ends, if each of the following occurs:

(A) The employee reports to or assembles at the office of the temporary services employer or other location.

(B) The employee is dispatched to a client's worksite each day and returns to or reports to the office of the temporary services employer or other location upon completion of the assignment.

(C) The employee's work is not executive, administrative, or professional, as defined in the wage orders of the Industrial Welfare Commission, and is not clerical.

(3) If an employee of a temporary services employer is assigned to work for a client engaged in a trade dispute, that employee's wages are due and payable at the end of each day, regardless of when the assignment ends.

(4) If an employee of a temporary services employer is assigned to work for a client and is discharged by the temporary services employer or leasing employer, wages are due and payable as provided in Section 201.

(5) If an employee of a temporary services employer is assigned to work for a client and quits his or her employment with the temporary services employer, wages are due and payable as provided in Section 202.

(6) If an employee of a temporary services employer is assigned to work for a client for over 90 consecutive calendar days, this section shall not apply unless the temporary services employer pays the employee weekly in compliance with paragraph (1) of subdivision (b).

(c) A temporary services employer who violates this section shall be subject to the civil penalties provided for in Section 203, and to any other penalties available at law.

(d) Nothing in this section shall be interpreted to limit any rights or remedies otherwise available under state or federal law.

(Amended by Stats. 2016, Ch. 61, Sec. 1. Effective July 22, 2016.)

201.5. (a) For purposes of this section, the following definitions apply:

(1) "An employee engaged in the production or broadcasting of motion pictures" means an employee to whom both of the following apply:

(A) The employee's job duties relate to or support the production or broadcasting of motion pictures or the facilities or equipment used in the production or broadcasting of motion pictures.

(B) The employee is hired for a period of limited duration to render services relating to or supporting a particular motion picture production or broadcasting project, or is hired on the basis of one or more daily or weekly calls.

(2) "Daily or weekly call" means an employment that, by its terms, will expire at the conclusion of one day or one week, unless renewed.

(3) "Next regular payday" means the day designated by the employer, pursuant to Section 204, for payment of wages earned during the payroll period in which the termination occurs.

(4) "Production or broadcasting of motion pictures" means the development, creation, presentation, or broadcasting of theatrical or televised motion pictures, television programs, commercial advertisements, music videos, or any other moving images, including, but not limited to, productions made for entertainment, commercial, religious, or educational purposes, whether these productions are presented by means of film, tape, live broadcast, cable, satellite transmission, Web cast, or any other technology that is now in use or may be adopted in the future.

(b) An employee engaged in the production or broadcasting of motion pictures whose employment terminates is entitled to receive payment of the wages earned and unpaid at the time of the termination by the next regular payday.

(c) The payment of wages to employees covered by this section may be mailed to the employee or made available to the employee at a location specified by the employer in the county where the employee was hired or performed labor. The payment shall be deemed to have been made on the date that the employee's wages are mailed to the employee or made available to the employee at the location specified by the employer, whichever is earlier.

(d) For purposes of this section, an employment terminates when the employment relationship ends, whether by discharge, lay off, resignation, completion of employment for a specified term, or otherwise.

(e) Nothing in this section prohibits the parties to a valid collective bargaining agreement from establishing alternative provisions for final payment of wages to employees covered by this section if those provisions do not exceed the time limitation established in Section 204.

(Repealed and added by Stats. 2006, Ch. 824, Sec. 2. Effective January 1, 2007.)

201.7. An employer who lays off an employee or a group of employees engaged in the business of oil drilling shall be deemed to have made immediate payment within the meaning of Section 201 if the wages of such employees are paid within such reasonable time as may be necessary for computation or payment thereof; provided, however, that such reasonable time shall not exceed 24 hours after discharge excluding Saturdays, Sundays, and holidays; and provided further, such payment may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on discharge of employees engaged in oil drilling because their employment at various locations is often far removed from the employer's principal administrative offices, which makes the computation and payment of wages on an immediate basis unduly burdensome.

(Added by Stats. 1980, Ch. 440.)

201.9. Notwithstanding subdivision (a) of Section 201, if employees are employed at a venue that hosts live theatrical or concert events and are enrolled in and routinely dispatched to employment through a hiring hall or other system of regular short-term employment established in accordance with a bona fide collective bargaining agreement, these employees and their employers may establish by express terms in their collective bargaining agreement the time limits for payment of wages to an employee who is discharged or laid off.

(Added by Stats. 2006, Ch. 685, Sec. 1. Effective January 1, 2007.)

202. (a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes

of the requirement to provide payment within 72 hours of the notice of quitting.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when a state employee quits, retires, or disability retires from his or her employment with the state, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability, retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(Amended by Stats. 2002, Ch. 40, Sec. 7. Effective May 16, 2002.)

203. (a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

(b) Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.

(Amended by Stats. 2014, Ch. 210, Sec. 1. Effective January 1, 2015.)

203.1. If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced. However, those wages and fringe benefits shall not continue for more than 30 days and this penalty shall not apply if the employer can establish to the satisfaction of the Labor Commissioner or an appropriate court of law that the violation of this section was unintentional. This penalty also shall not apply in any case in which an employee recovers the service charge authorized by Section 1719 of the Civil Code in an action brought by the employee thereunder.

(Amended by Stats. 2008, Ch. 169, Sec. 3. Effective January 1, 2009.)

203.5. (a) If a bonding company issuing a bond which secures the payment of wages for labor or the surety on a bond willfully fails to pay, without abatement or reduction, any verified claim made for wages found to be due and payable, the claim for wages shall continue as a penalty against the bonding company or surety from the date on which demand for payment was made at the same rate until paid as the wages upon which the claim is based, except that the claim shall not continue as a penalty for more than 30 days.

(b) This section shall not apply to contractor's bonds required pursuant to Section 7071.6 of the Business and Professions Code.

(Amended by Stats. 1989, Ch. 1281, Sec. 1.)

204. (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

(Amended by Stats. 2008, Ch. 169, Sec. 4. Effective January 1, 2009.)

204a. When workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers, or some of them, cooperate to establish a plan for the payment of wages at a central place or places and in accordance with a unified schedule of pay days, all the provisions of this chapter except 201, 202, and 208 shall apply. All such workers, including those who have been discharged and those who quit, shall receive their wages at such central place or places.

This section shall not apply to any such plan until 10 days after notice of their intention to set up such a plan shall have been given to the Labor Commissioner by the employers who cooperate to establish the plan. Having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the Labor Commissioner by the employers intending to abandon the plan.

(Added by Stats. 1941, Ch. 11.)

204b. Section 204 shall be inapplicable to employees paid on a weekly basis on a regular day designated by the employer in advance of the rendition of services as the regular payday.

Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.

(Added by Stats. 1959, Ch. 1564.)

204c. Section 204 shall be inapplicable to executive, administrative or professional employees who are not covered by any collective bargaining agreement, who are not subject to the Fair Labor Standards Act, whose monthly remuneration does not include overtime pay, and who are paid within seven days of the close of their monthly payroll period.

(Added by Stats. 1971, Ch. 343.)

204.1. Commission wages paid to any person employed by an employer licensed as a vehicle dealer by the Department of Motor Vehicles are due and payable once during each calendar month on a day designated in advance by the employer as the regular payday. Commission wages are compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof.

The provisions of this section shall not apply if there exists a collective bargaining agreement between the employer and his employees which provides for the date on which wages shall be paid.

(Added by Stats. 1967, Ch. 1170.)

204.2. Salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended through March 1, 1969, (Title 29, Section 213(a)(1), United States Code) in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads, earned for labor performed in excess of 40 hours in a calendar week are due and payable on or before the 26th day of the calendar month immediately following the month in which such labor was performed. However, when such employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements will apply to the covered employees.

(Added by Stats. 1970, Ch. 1237.)

204.3. (a) An employee may receive, in lieu of overtime compensation, compensating time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. If an hour of employment would otherwise be compensable at a rate of more than one and one-half times the employee's regular rate of compensation, then the employee may receive compensating time off commensurate with the higher rate.

(b) An employer may provide compensating time off under subdivision (a) if the following four conditions are met:

(1) The compensating time off is provided pursuant to applicable provisions of a collective bargaining agreement, memorandum of understanding, or other written agreement between the employer and the duly authorized representative of the employer's employees; or, in the case of employees not covered by the aforementioned agreement or memorandum of understanding, pursuant to a written agreement entered into between the employer and employee before the performance of the work.

(2) The employee has not accrued compensating time in excess of the limit prescribed by subdivision (c).

(3) The employee has requested, in writing, compensating time off in lieu of overtime compensation.

(4) The employee is regularly scheduled to work no less than 40 hours in a workweek.

(c) (1) An employee may not accrue more than 240 hours of compensating time off. Any employee who has accrued 240 hours of compensating time off shall, for any additional overtime hours of work, be paid overtime compensation.

(2) If compensation is paid to an employee for accrued compensating time off, the compensation shall be paid at the regular rate earned by the employee at the time the employee receives payment.

(d) An employee who has accrued compensating time off authorized to be provided under subdivision (a) shall, upon termination of employment, be paid for the unused compensating time at a rate of compensation not less than the average regular rate received by the employee during the last three years of the employee's employment, or the final regular rate received by the employee, whichever is higher.

(e) (1) An employee who has accrued compensating time off authorized to be provided under subdivision (a), and who has requested the use of that compensating time, shall be permitted

by the employee's employer to use the time within a reasonable period after making the request, if the use of the compensating time does not unduly disrupt the operations of the employer.

(2) Upon the request of an employee, the employer shall pay overtime compensation in cash in lieu of compensating time off for any compensating time off that has accrued for at least two pay periods.

(3) For purposes of determining whether a request to use compensating time has been granted within a reasonable period, the following factors shall be relevant:

(A) The normal schedule of work.

(B) Anticipated peak workloads based on past experience.

(C) Emergency requirements for staff and services.

(D) The availability of qualified substitute staff.

(f) Every employer shall keep records that accurately reflect compensating time earned and used.

(g) For purposes of this section, the terms "compensating time" and "compensating time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(h) This section shall not apply to any employee exempt from the overtime provisions of the California wage orders.

(i) This section shall not apply to any employee who is subject to the following wage orders of the Industrial Welfare Commission: Orders No. 8-80, 13-80, and 14-80 (affecting industries handling products after harvest, industries preparing agricultural products for market on the farm, and agricultural occupations), Order No. 3-80 (affecting the canning, freezing, and preserving industry), Orders No. 5-89 and 10-89 (affecting the public housekeeping and amusement and recreation industries), and Order No. 1-89 (affecting the manufacturing industry).

(Added by Stats. 1993, Ch. 544, Sec. 1. Effective January 1, 1994.)

205. In agricultural, viticultural, and horticultural pursuits, in stock or poultry raising, and in household domestic service, when the employees in such employments are boarded and lodged by the employer, the wages due any employee remaining in such employment shall become due and payable once in each calendar month on a day designated in advance by the employer as the regular payday. No two successive paydays shall be more than 31 days apart, and the payment shall include all wages up to the regular payday. Notwithstanding the provisions of this section, wages of workers employed by a farm labor contractor shall be paid on payroll periods at least once every week on a business day designated in advance by the farm labor contractor. Payment on such payday shall include all wages earned up to and including the fourth day before such payday.

(Amended by Stats. 1976, Ch. 1041.)

205.5. All wages, other than those mentioned in Sections 201 and 202, earned by any agricultural employee, as defined in Section 1140.4, are due and payable twice during each calendar month, on days designated in advance by the agricultural employer as the regular paydays. Labor performed between the 1st and the 15th days, inclusive, of any calendar month shall be paid between the 16th and the 22nd day of the month during which the labor was performed. Labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid between the first and the seventh day of the following month. Agricultural employees, as used in this section, shall not include those employees who are covered by Section 205.

(Amended by Stats. 1997, Ch. 92, Sec. 2. Effective January 1, 1998.)

206. (a) In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed.

(b) If, after an investigation and hearing, the Labor Commissioner has determined the validity of any employee's claim for wages, the claim is due and payable within 10 days after receipt of notice by the employer that such wages are due. Any employer having the ability to pay who willfully fails to pay such wages within 10 days shall, in addition to any other applicable penalty, pay treble the amount of any damages accruing to the employee as a direct and foreseeable consequence of such failure to pay.

(Amended by Stats. 1975, Ch. 312.)

206.5. (a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

(b) For purposes of this section, "execution of a release" includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.

(Amended by Stats. 2008, Ch. 224, Sec. 1. Effective January 1, 2009.)

207. Every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, in accordance with this article.

(Enacted by Stats. 1937, Ch. 90.)

208. Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

(Enacted by Stats. 1937, Ch. 90.)

209. In the event of any strike, the unpaid wages earned by striking employees shall become due and payable on the next regular pay day, and the payment or settlement thereof shall include all amounts due the striking employees without abatement or reduction. The employer shall return to each striking employee any deposit, money, or other guaranty required by him from the employee for the faithful performance of the duties of the employment.

(Enacted by Stats. 1937, Ch. 90.)

210. (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The

action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

(Amended by Stats. 2008, Ch. 169, Sec. 5. Effective January 1, 2009.)

211. When action to recover such penalties is brought, no court costs shall be payable by the state or the division. Any sheriff or marshal who serves the summons in the action upon any defendant within his or her jurisdiction shall do so without cost to the division. The sheriff or marshal shall specify in the return what costs he or she would ordinarily have been entitled to for such service, and those costs and the other regular court costs that would have accrued were the action not on behalf of the state shall be made a part of any judgment recovered by the plaintiff and shall be paid out of the first money recovered on the judgment. Several causes of action for the penalties may be united in the same action without being separately stated. A demand is a prerequisite to the bringing of any action under this section or Section 210. The division on behalf of the state may accept and receipt for any penalties so paid, with or without suit.

(Amended by Stats. 1996, Ch. 872, Sec. 105. Effective January 1, 1997.)

212. (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

(Amended by Stats. 1997, Ch. 352, Sec. 1. Effective January 1, 1998.)

213. Nothing contained in Section 212 shall:

(a) Prohibit an employer from guaranteeing the payment of bills incurred by an employee for the necessaries of life or for the tools and implements used by the employee in the performance of his or her duties.

(b) Apply to counties, municipal corporations, quasi-municipal corporations, or school districts.

(c) Apply to students of nonprofit schools, colleges, universities, and other nonprofit educational institutions.

(d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.

(Amended by Stats. 2005, Ch. 149, Sec. 1. Effective January 1, 2006.)

214. Prosecution under section 212 may be brought either at the place where the alleged illegal order, check, draft, note, memorandum or other acknowledgment of wage indebtedness is issued or at the place where it is made payable.

(Enacted by Stats. 1937, Ch. 90.)

215. Any person, or the agent, manager, superintendent or officer thereof, who violates any provision of Section 201.3, 204, 204b, 205, 207, 208, 209, or 212 is guilty of a misdemeanor. Any failure to keep posted any notice required by Section 207 is prima facie evidence of a violation of these sections.

(Amended by Stats. 2008, Ch. 169, Sec. 6. Effective January 1, 2009.)

216. In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

(a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

(Amended by Stats. 1959, Ch. 1358.)

217. The Division of Labor Law Enforcement shall inquire diligently for any violations of this article, and, in cases which it deems proper, shall institute the actions for the penalties provided for in this article and shall enforce this article.

(Amended by Stats. 1945, Ch. 1431.)

218. Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.

(Enacted by Stats. 1937, Ch. 90.)

218.5. (a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. However, if the prevailing party in the court action is not an employee, attorney's fees and costs shall be awarded pursuant to this section only if the court finds that the employee brought the court action in bad faith. This section shall not apply to an action brought by the Labor Commissioner. This section shall not apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code or to an action to enforce a mechanics lien brought under Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code.

(b) This section does not apply to any cause of action for which attorney's fees are recoverable under Section 1194.

(Amended (as amended by Stats. 2010, Ch. 697, Sec. 42) by Stats. 2013, Ch. 142, Sec. 1. Effective January 1, 2014.)

218.6. In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.

(Added by Stats. 2000, Ch. 876, Sec. 5. Effective January 1, 2001.)

219. (a) Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied.

(b) The state employer does not violate this section by authorizing employees who quit, or are discharged from, their employment with the state to take payment for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, as provided in Section 201 or 202.

(Amended by Stats. 2002, Ch. 40, Sec. 8. Effective May 16, 2002.)

220. (a) Sections 201.3, 201.5, 201.7, 203.1, 203.5, 204, 204a, 204b, 204c, 204.1, 205, and 205.5 do not apply to the payment of wages of employees directly employed by the State of California. Except as provided in subdivision (b), all other employment is subject to these provisions.

(b) Sections 200 to 211, inclusive, and Sections 215 to 219, inclusive, do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation. All other employments are subject to these provisions.

(Amended by Stats. 2008, Ch. 169, Sec. 7. Effective January 1, 2009.)

220.2. Contributions to vacation allowances, pension or retirement funds, sick leave, and health and welfare benefits on behalf of persons employed by any county, political subdivision, incorporated city or town or other municipal corporations may be made in the same manner and on the same basis as made by private employers.

Payments made by the employing agency to any such fund on behalf of any employee shall be in lieu of benefits such as vacation allowance, pension or retirement fund, sick leave, and health and welfare benefits which are now or may hereafter be granted directly by the employing agency in accordance with law.

This section shall only apply to nonpermanent laborers, workmen, and mechanics employed on an hourly or per diem basis.

The employing agency is empowered to determine the equitable application of this section to insure that the employees receive benefits comparable to, but not in excess of those provided in comparable private employment.

The employing agency shall make payments only to plans which meet the following standards:

1. A plan office is located within the State of California.

2. Any fund connected with the plan is required to be audited at least annually by an independent, licensed certified public accountant.

3. Each trustee or administrator of the fund or plan authorized to receive, handle, deal with or draw upon the assets of the fund or plan is required to be bonded.

(Amended by Stats. 1969, Ch. 1230.)

221. It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

(Added by Stats. 1937, Ch. 357.)

222. It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.

(Amended by Stats. 1939, Ch. 1062.)

222.5. No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

(Amended by Stats. 1957, Ch. 1113.)

223. Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

(Added by Stats. 1937, Ch. 357.)

224. The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Nothing in this section or any other provision of law shall be construed as authorizing an employer to withhold or divert any portion of an employee's wages to pay any tax, fee or charge prohibited by Section 50026 of the Government Code, whether or not the employee authorizes such withholding or diversion.

(Amended by Stats. 1968, Ch. 559.)

225. The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor.

(Amended by Stats. 1945, Ch. 1191.)

225.5. In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in

the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

(Amended by Stats. 2003, Ch. 329, Sec. 2. Effective January 1, 2004.)

226. (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

(3) For purposes of this subdivision, a "knowing and intentional failure" does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar ($750) penalty from the employer.

(g) The listing by an employer of the name and address of the legal entity that secured the services of the employer in the itemized statement required by subdivision (a) shall not create any liability on the part of that legal entity.

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(i) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

(j) An itemized wage statement furnished by an employer pursuant to subdivision (a) shall not be required to show total hours worked by the employee if any of the following apply:

(1) The employee's compensation is solely based on salary and the employee is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission.

(2) The employee is exempt from the payment of minimum wage and overtime under any of the following:

(A) The exemption for persons employed in an executive, administrative, or professional capacity provided in any applicable order of the Industrial Welfare Commission.

(B) The exemption for outside salespersons provided in any applicable order of the Industrial Welfare Commission.

(C) The overtime exemption for computer software professionals paid on a salaried basis provided in Section 515.5.

(D) The exemption for individuals who are the parent, spouse, child, or legally adopted child of the employer provided in any applicable order of the Industrial Welfare Commission.

(E) The exemption for participants, director, and staff of a live-in alternative to incarceration rehabilitation program with special focus on substance abusers provided in Section 8002 of the Penal Code.

(F) The exemption for any crew member employed on a commercial passenger fishing boat licensed pursuant to Article 5 (commencing with Section 7920) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code provided in any applicable order of the Industrial Welfare Commission.

(G) The exemption for any individual participating in a national service program provided in any applicable order of the Industrial Welfare Commission.

(Amended by Stats. 2016, Ch. 77, Sec. 1. Effective January 1, 2017.)

226.1. The requirements of item (9) of subdivision (a) of Section 226, with respect to a temporary services employer, do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(Added by Stats. 2012, Ch. 844, Sec. 2. Effective January 1, 2013.)

226.2. This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

(B) For employers who pay on a semimonthly basis, employees shall be compensated at least at the applicable minimum wage rate for the rest and recovery periods together with other wages for the payroll period during which the rest and recovery periods occurred. Any additional compensation required for those employees pursuant to clause (i) of subparagraph (A) is payable no later than the payday for the next regular payroll period.

(C) (i) Employers who meet the requirements in clause (ii) shall have until April 30, 2016, to program their payroll systems to perform and record the calculation required by clause (i) of subparagraph (A) and comply with the itemized statement requirements in paragraph (2), so long as the employer pays piece rate employees for all rest and recovery periods at or above the applicable minimum wage from January 1, 2016, to April 30, 2016, inclusive, and pays the difference between the amounts paid and the amounts that would be owed under clause (i) of subparagraph (A), together with interest calculated in accordance with subdivision (c) of Section 98.1, by no later than April 30, 2016.

(ii) For an employer to meet the requirements of this subparagraph, all of the following shall apply:

(I) The employer was acquired by another legal entity on or after July 1, 2015, and before October 1, 2015.

(II) The employer employed at least 4,700 employees in this state at the time of the acquisition.

(III) The employer employed at least 17,700 employees nationwide at the time of the acquisition.

(IV) The employer was a publicly traded company on a national securities exchange at the time of the acquisition.

(4) Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

(5) The amount of other nonproductive time may be determined either through actual records or the employer's reasonable estimates, whether for a group of employees or for a particular employee, of other nonproductive time worked during the pay period.

(6) An employer who is found to have made a good faith error in determining the total or estimated amount of other

nonproductive time worked during the pay period shall remain liable for the payment of compensation for all hours worked in other nonproductive time, but shall not be liable for statutory civil penalties, including, but not limited to, penalties under Section 226.3, or liquidated damages based solely on that error, provided that both of the following are true:

(A) The employer has provided the wage statement information required by subparagraph (B) of paragraph (2) and paid the compensation due for the amount of other nonproductive time determined by the employer in accordance with the requirements of paragraphs (4) and (5).

(B) The total compensation paid for any day in the pay period is no less than what is due under the applicable minimum wage and any required overtime compensation.

(7) An employer who, in addition to paying any piece-rate compensation, pays an hourly rate of at least the applicable minimum wage for all hours worked, shall be deemed in compliance with paragraph (4).

(b) Notwithstanding any other statute or regulation, the employer and any other person shall have an affirmative defense to any claim or cause of action for recovery of wages, damages, liquidated damages, statutory penalties, or civil penalties, including liquidated damages pursuant to Section 1194.2, statutory penalties pursuant to Section 203, premium pay pursuant to Section 226.7, and actual damages or liquidated damages pursuant to subdivision (e) of Section 226, based solely on the employer's failure to timely pay the employee the compensation due for rest and recovery periods and other nonproductive time for time periods prior to and including December 31, 2015, if, by no later than December 15, 2016, an employer complies with all of the following:

(1) The employer makes payments to each of its employees, except as specified in paragraph (2), for previously uncompensated or undercompensated rest and recovery periods and other nonproductive time from July 1, 2012, to December 31, 2015, inclusive, using one of the formulas specified in subparagraph (A) or (B):

(A) The employer determines and pays the actual sums due together with accrued interest calculated in accordance with subdivision (c) of Section 98.1.

(B) The employer pays each employee an amount equal to 4 percent of that employee's gross earnings in pay periods in which any work was performed on a piece-rate basis from July 1, 2012, to December 31, 2015, inclusive, less amounts already paid to that employee, separate from piece-rate compensation, for rest and recovery periods and other nonproductive time during the same time, provided that the amount by which the payment to each employee may be reduced for amounts already paid for other nonproductive time shall not exceed 1 percent of the employee's gross earnings during the same time.

(2) Payment shall not be required for any part of the time period specified in paragraph (1) for which either of the following apply:

(A) An employee has, prior to August 1, 2015, entered into a valid release of claims not otherwise banned by this code or any other applicable law for compensation for rest and recovery periods and other nonproductive time.

(B) A release of claims covered by this subdivision executed in connection with a settlement agreement filed with a court prior to October 1, 2015, and later approved by the court.

(3) By no later than July 1, 2016, the employer provides written notice to the department of the employer's election to make payments to its current and former employees in accordance with the requirements of this subdivision and subdivision (c).

(A) The notice must include the legal name and address of the employer and must be mailed or delivered to the Director of Industrial Relations, Attn: Piece-Rate Section, 226.2 Election Notice, 1515 Clay Street, 17th Floor, Oakland, CA 94612. The director may provide for an email address to receive notices electronically in lieu of postal mail.

(B) The department shall post on its Internet Web site either a list of the employers who have provided the required notice or copies of the actual notices. The list or notices shall remain posted until March 31, 2017.

(4) The employer calculates and begins making payments to employees as soon as reasonably feasible after it provides the notice referred to in paragraph (3) and completes the payments by no later than December 15, 2016, to each employee to whom the wages are due, or to the Labor Commissioner pursuant to Section 96.7 for any employee whom the employer cannot locate.

(5) The employer provides each employee receiving a payment with an accompanying accurate statement that contains all of the following information:

(A) A statement that the payment has been made pursuant to this section.

(B) A statement as to whether the payment was determined based on the formula in subparagraph (A) of paragraph (1), or on the formula in subparagraph (B) of paragraph (1).

(C) If the payment is based on the formula in subparagraph (A) of paragraph (1), a statement, spreadsheet, listing, or similar document that states, for each pay period for which compensation was included in the payment, the total hours of rest and recovery periods and other nonproductive time of the employee, the rates of compensation for that time, and the gross wages paid for that time.

(D) If the payment is based on the formula in subparagraph (B) of paragraph (1), a statement, spreadsheet, listing, or similar document that shows, for each pay period during which the employee had earnings during the period from July 1, 2012, through December 31, 2015, inclusive, the gross wages of the employee and any amounts already paid to the employee, separate from piece-rate compensation, for rest and recovery periods and other nonproductive time.

(E) The calculations that were made to determine the total payment made.

(c) An employer who makes a reasonable and good faith effort to make the payments described in paragraph (1) of subdivision (b), and to provide the accurate statement described in paragraph (5) of subdivision (b), to all employees, but who solely through good faith error fails to make a payment to one or more employees as described in paragraph (1) of subdivision (b), or to provide an accurate statement as described in paragraph (5) of subdivision (b), shall not lose the affirmative defense set forth in subdivision (b) as a result of that good faith error if the employer, within 30 days of discovery or notice of the error, makes the payment described in paragraph (1) of subdivision (b) together with accrued interest calculated in accordance with subdivision (c) of Section 98.1 for any delay in payment after December 15, 2016, to the employees and accompanies the payment with an accurate statement as described in paragraph (5) of subdivision (b). The employer shall have the burden of proving that a failure to pay an employee was solely the result of good faith error.

(d) (1) The employer shall use due diligence, including, but not limited to, the use of people locator services, to locate and

pay former employees who no longer work for the employer in the event that former employees have relocated. For payments made to the Labor Commissioner pursuant to paragraph (4) of subdivision (b), the employer shall pay the Labor Commissioner an additional administrative fee equal to one-half of 1 percent of the aggregate payments made, or two thousand five hundred dollars ($2,500), whichever is less, for deposit into the Labor Enforcement and Compliance Fund.

(2) Any payments made to the Labor Commissioner pursuant to paragraph (4) of subdivision (b) shall be accompanied by a statement, in both printed and electronic format, that identifies each employee for whom payment is made, the amount payable to that employee, and if available, the employee's last known address and social security number.

(3) The employer shall preserve all records of hours worked, calculations of hours worked, and records of payments made to employees and the Labor Commissioner pursuant to subdivision (b) and this subdivision, until December 16, 2020, and furnish the records related to an employee on request by the employee.

(e) Beginning on January 1, 2016, and ending on July 1, 2016, if the employer has not provided the notice required by paragraph (3) of subdivision (b), or ending on December 15, 2016, if the employer has provided the notice required by paragraph (3) of subdivision (b), the statute of limitations shall be tolled for that period of time for any claims based on failure to fully compensate employees compensated on a piece-rate basis for rest and recovery periods and other nonproductive time prior to January 1, 2016.

(f) Any notice to the Labor and Workforce Development Agency on or before December 31, 2015, pursuant to paragraph (1) of subdivision (a) of Section 2699.3, alleging violations based upon failure to properly compensate employees for rest and recovery periods, is void as to those alleged violations. Beginning January 1, 2016, and subject to the tolling provisions of subdivision (e), an aggrieved employee or representative shall give written notice by certified mail to both the Labor and Workforce Development Agency and the employer of any violations based on failure to compensate employees fully for rest and recovery periods and other nonproductive time.

(g) The provisions in subdivisions (b), (c), (d), (e), and (f) shall not apply to any of the following:

(1) Damages and penalties previously awarded in an order or judgment that was final and not subject to further appeal as of January 1, 2016.

(2) Claims based on the failure to provide paid rest or recovery periods or pay for other nonproductive time for which all of the following are true:

(A) The claim was asserted in a court pleading filed prior to March 1, 2014, or was asserted in an amendment to a claim that relates back to a court pleading filed prior to March 1, 2014, and the amendment or permission for amendment was filed prior to July 1, 2015.

(B) The claim was asserted against a defendant named with specificity and joined as a defendant, other than as an unnamed (DOE) defendant pursuant to Section 474 of the Code of Civil Procedure, in the pleading referred to in subparagraph (A), or another pleading or amendment filed in the same action prior to January 1, 2015.

(3) Claims that employees were not advised of their right to take rest or recovery breaks, that rest and recovery breaks were not made available, or that employees were discouraged or otherwise prevented from taking such breaks.

(4) Claims for unpaid wages, damages, and penalties that accrue after January 1, 2016.

(5) Claims for paid rest or recovery periods or pay for other nonproductive time that were made in any case filed prior to April 1, 2015, when the case contained by that date an allegation that the employer has intentionally stolen, diminished, or otherwise deprived employees of wages through the use of fictitious worker names or names of workers that were not actually working.

(6) An employer that is a new motor vehicle dealer, as defined by Section 426 of the Vehicle Code.

(h) Amendment to assert the affirmative defense provided in subdivision (b) in actions filed on or after March 1, 2014, unless final and not subject to further appeal as of January 1, 2016, shall be permitted.

(i) Nothing in this section shall limit or bar any action or proceeding by the Labor Commissioner or any private party for any failure to provide a rest and recovery period in accordance with any provision of this code, any order of the Industrial Welfare Commission, or any regulation adopted by the Department of Industrial Relations or any of its divisions, other than actions or proceedings based solely on the employer's failure to timely pay the compensation due for rest and recovery periods.

(j) Nothing in this section precludes a judge from awarding statutory, contractual, or common fund attorney's fees or costs in connection with an action filed before October 1, 2015.

(k) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

(Added by Stats. 2015, Ch. 754, Sec. 4. Effective January 1, 2016. Repealed as of January 1, 2021, by its own provisions. See later operative version added by Sec. 5 of Stats. 2015, Ch. 754.)

226.2. This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

(3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

(B) For employers who pay on a semimonthly basis, employees shall be compensated at least at the applicable minimum wage rate for the rest and recovery periods together with other wages for the payroll period during which the rest and recovery periods occurred. Any additional compensation required for those employees pursuant to clause (i) of subparagraph (A) is payable no later than the payday for the next regular payroll period.

(4) Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

(5) The amount of other nonproductive time may be determined either through actual records or the employer's reasonable estimates, whether for a group of employees or for a particular employee, of other nonproductive time worked during the pay period.

(6) An employer who is found to have made a good faith error in determining the total or estimated amount of other nonproductive time worked during the pay period shall remain liable for the payment of compensation for all hours worked in other nonproductive time, but shall not be liable for statutory civil penalties, including, but not limited to, penalties under Section 226.3, or liquidated damages based solely on that error, provided that both of the following are true:

(A) The employer has provided the wage statement information required by subparagraph (B) of paragraph (2) and paid the compensation due for the amount of other nonproductive time determined by the employer in accordance with the requirements of paragraphs (4) and (5).

(B) The total compensation paid for any day in the pay period is no less than what is due under the applicable minimum wage and any required overtime compensation.

(7) An employer who, in addition to paying any piece-rate compensation, pays an hourly rate of at least the applicable minimum wage for all hours worked, shall be deemed in compliance with paragraph (4).

(b) This section shall become operative on January 1, 2021.

(Repealed (in Sec. 4) and added by Stats. 2015, Ch. 754, Sec. 5. Effective January 1, 2016. Section operative January 1, 2021, by its own provisions.)

226.3. Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

(Amended by Stats. 1992, Ch. 424, Sec. 1. Effective January 1, 1993.)

226.4. If, upon inspection or investigation, the Labor Commissioner determines that an employer is in violation of subdivision (a) of Section 226, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated.

(Amended by Stats. 2006, Ch. 538, Sec. 479. Effective January 1, 2007.)

226.5. (a) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, he or she shall within 15 business days after service of the citation notify the office of the Labor Commissioner which appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(b) A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(c) When no petition objecting to a citation or the proposed assessment of a civil penalty is filed, a certified copy of the citation or proposed civil penalty may be filed by the Labor Commissioner in the office of the clerk or the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty.

(d) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(Amended by Stats. 1988, Ch. 96, Sec. 4.)

226.6. Any employer who knowingly and intentionally violates the provisions of Section 226, or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due any employee, and who knowingly and intentionally participates or aids in

the violation of any provision of Section 226 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court. That fine or imprisonment, or both, shall be in addition to any other penalty provided by law.

(Amended by Stats. 2010, Ch. 328, Sec. 150.5. Effective January 1, 2011.)

226.7. (a) As used in this section, "recovery period" means a cooldown period afforded an employee to prevent heat illness.

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

(e) This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

(Amended by Stats. 2014, Ch. 72, Sec. 1. Effective January 1, 2015.)

226.8. (a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law.

(d) (1) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer that is a licensed contractor pursuant to the Contractors' State License Law has violated subdivision (a), the agency, in addition to any other remedy that has been ordered, shall transmit a certified copy of the order to the Contractors' State License Board.

(2) The registrar of the Contractors' State License Board shall initiate disciplinary action against a licensee within 30 days of receiving a certified copy of an agency or court order that resulted in disbarment pursuant to paragraph (1).

(e) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:

(1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.

(2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.

(3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:

(1) An officer shall sign the notice.

(2) It shall post the notice for one year commencing with the date of the final decision and order.

(g) (1) In accordance with the procedures specified in Sections 98 to 98.2, inclusive, the Labor Commissioner may issue a determination that a person or employer has violated subdivision (a).

(2) If, upon inspection or investigation, the Labor Commissioner determines that a person or employer has violated subdivision (a), the Labor Commissioner may issue a citation to assess penalties set forth in subdivisions (b) and (c) in addition to any other penalties or damages that are otherwise available at law. The procedures for issuing, contesting, and enforcing judgments shall be the same as those set forth in Section 1197.1.

(3) The Labor Commissioner may enforce this section pursuant to Section 98 or in a civil suit.

(h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or disciplinary action pursuant to subdivision (d) or (e) shall remain in effect against any successor corporation, owner, or business entity that satisfies both of the following:

(1) Has one or more of the same principals or officers as the person or employer subject to the penalty or action.

(2) Is engaged in the same or a similar business as the person or employer subject to the penalty or action.

(i) For purposes of this section, the following definitions apply:

(1) "Determination" means an order, decision, award, or citation issued by an agency or a court of competent jurisdiction for which the time to appeal has expired and for which no appeal is pending.

(2) "Labor and Workforce Development Agency" means the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies.

(3) "Officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, or any other officer of the corporation who performs a policymaking function. If the employer is a partnership, "officer" means a partner. If the employer is a sole proprietor, "officer" means the owner.

(4) "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.

(j) Nothing in this section is intended to limit any rights or remedies otherwise available at law.

(Amended by Stats. 2012, Ch. 162, Sec. 116. Effective January 1, 2013.)

227. If an employer has made withholdings from an employee's wages pursuant to state, local, or federal law, or has agreed with any employee to make payments to a health or welfare fund, pension fund, or vacation plan, or other similar plan for the benefit of the employees, or a negotiated industrial promotion fund, or has entered into a collective bargaining agreement providing for these payments, it shall be unlawful for that employer willfully or with intent to defraud to fail to remit the withholdings to the proper agency or to fail to make the payments required by the terms of that agreement. A violation of any provision of this section when the amount the employer failed to pay into the fund or funds exceeds five hundred dollars ($500) shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine. All other violations shall be punishable as a misdemeanor. In a criminal proceeding under this section, any withholdings that are recovered from an employer shall be forwarded to the appropriate fund or plan and, if restitution is imposed, the court shall direct to which agency, entity, or person it shall be paid.

(Amended by Stats. 2013, Ch. 718, Sec. 1. Effective January 1, 2014.)

227.3. Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

(Amended by Stats. 1976, Ch. 1041.)

227.5. Whenever an employer has agreed with any employee to make payments to a health or welfare fund, pension fund or vacation plan, or such other plan for the benefit of the employee, or has entered into a collective bargaining agreement providing for such payments, the employer upon written request of the employee shall furnish such employee annually a statement indicating whether or not such payments have been made and for what periods.

(Added by Stats. 1963, Ch. 898.)

228. The payments under Section 227 of this code shall be deemed to include payments to apprenticeship funds.

This amendment is hereby declared to be merely a clarification of the original intention of the Legislature and is not a substantive change.

(Added by Stats. 1961, Ch. 1218.)

229. Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate. This section shall not apply to claims involving any dispute concerning the interpretation or application of any collective bargaining agreement containing such an arbitration agreement.

(Added by Stats. 1959, Ch. 1939.)

230. (a) An employer shall not discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that the employee is required to serve.

(b) An employer shall not discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) An employer shall not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.

(d) (1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a licensed medical professional, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking.

(3) To the extent allowed by law and consistent with subparagraph (D) of paragraph (7) of subdivision (f), the employer shall maintain the confidentiality of any employee requesting leave under subdivision (c).

(e) An employer shall not discharge or in any manner discriminate or retaliate against an employee because of the

employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status.

(f) (1) An employer shall provide reasonable accommodations for a victim of domestic violence, sexual assault, or stalking who requests an accommodation for the safety of the victim while at work.

(2) For purposes of this subdivision, reasonable accommodations may include the implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, or stalking, or referral to a victim assistance organization.

(3) An employer is not required to provide a reasonable accommodation to an employee who has not disclosed his or her status as a victim of domestic violence, sexual assault, or stalking.

(4) The employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(5) In determining whether the accommodation is reasonable, the employer shall consider an exigent circumstance or danger facing the employee.

(6) This subdivision does not require the employer to undertake an action that constitutes an undue hardship on the employer's business operations, as defined by Section 12926 of the Government Code. For the purposes of this subdivision, an undue hardship also includes an action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees as required by Section 6400 of the Labor Code.

(7) (A) Upon the request of an employer, an employee requesting a reasonable accommodation pursuant to this subdivision shall provide the employer a written statement signed by the employee or an individual acting on the employee's behalf, certifying that the accommodation is for a purpose authorized under this subdivision.

(B) The employer may also request certification from an employee requesting an accommodation pursuant to this subdivision demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking. Certification shall be sufficient in the form of any of the categories described in paragraph (2) of subdivision (d).

(C) An employer who requests certification pursuant to subparagraph (B) may request recertification of an employee's status as a victim of domestic violence, sexual assault, or stalking every six months after the date of the previous certification.

(D) Any verbal or written statement, police or court record, or other documentation provided to an employer identifying an employee as a victim of domestic violence, sexual assault, or stalking shall be maintained as confidential by the employer and shall not be disclosed by the employer except as required by federal or state law or as necessary to protect the employee's safety in the workplace. The employee shall be given notice before any authorized disclosure.

(E) (i) If circumstances change and an employee needs a new accommodation, the employee shall request a new accommodation from the employer.

(ii) Upon receiving the request, the employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(F) If an employee no longer needs an accommodation, the employee shall notify the employer that the accommodation is no longer needed.

(8) An employer shall not retaliate against a victim of domestic violence, sexual assault, or stalking for requesting a reasonable accommodation, regardless of whether the request was granted.

(g) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) or (b) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer for reasons prohibited in subdivision (c) or (e), or because the employee has requested or received a reasonable accommodation as set forth in subdivision (f), shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief.

(3) An employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(h) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a), (b), (c), (e), or (f) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee may file a complaint with the division based upon a violation of subdivision (c), (e), or (f) within one year from the date of occurrence of the violation.

(i) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(j) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

(3) "Stalking" means a crime set forth in Section 646.9 of the Penal Code or Section 1708.7 of the Civil Code.

(Amended by Stats. 2013, Ch. 759, Sec. 1. Effective January 1, 2014.)

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer

with 25 or more employees shall not discharge, or in any manner discriminate or retaliate against, an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for any of the following purposes:

(1) To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.

(3) To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the categories described in paragraph (2) of subdivision (d) of Section 230.

(3) To the extent allowed by law and consistent with subparagraph (D) of paragraph (7) of subdivision (f) of Section 230, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief. An employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee may file a complaint with the division based upon a violation of subdivision (a) within one year from the date of occurrence of the violation.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section shall not be diminished by any term or condition of a collective bargaining agreement.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

(g) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

(3) "Stalking" means a crime set forth in Section 646.9 of the Penal Code or Section 1708.7 of the Civil Code.

(h) (1) Employers shall inform each employee of his or her rights established under this section and subdivisions (c), (e), and (f) of Section 230 in writing. The information shall be provided to new employees upon hire and to other employees upon request.

(2) The Labor Commissioner shall develop a form that an employer may use to comply with the notice requirements in paragraph (1). The form shall set forth the rights and duties of employers and employees under this section in clear and concise language. The Labor Commissioner shall post the form on the commissioner's Internet Web site to make it available to employers who are required to comply with this section. If an employer elects not to use the form developed by the Labor Commissioner, the notice provided by the employer to the employees shall be substantially similar in content and clarity to the form developed by the Labor Commissioner. The Labor Commissioner shall develop the form and post it in accordance with this paragraph on or before July 1, 2017.

(3) Employers shall not be required to comply with paragraph (1) until the Labor Commissioner posts the form on the commissioner's Internet Web site in accordance with paragraph (2).

(Amended by Stats. 2016, Ch. 355, Sec. 1. Effective January 1, 2017.)

230.2. (a) As used in this section:

(1) "Immediate family member" means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(2) "Registered domestic partner" means a domestic partner, as defined in Section 297 of the Family Code, and registered pursuant to Part 2 (commencing with Section 298) of Division 2.5 of the Family Code.

(3) "Victim" means a person against whom one of the following crimes has been committed:

(A) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(B) A serious felony, as defined in subdivision (c) of Section 1192.7 of the Penal Code.

(C) A felony provision of law proscribing theft or embezzlement.

(b) An employer, and any agent of an employer, shall allow an employee who is a victim of a crime, an immediate family member of a victim, a registered domestic partner of a victim, or the child of a registered domestic partner of a victim to be absent from work in order to attend judicial proceedings related to that crime.

(c) Before an employee may be absent from work pursuant to subdivision (b), the employee shall give the employer a copy of the notice of each scheduled proceeding that is provided to the victim by the agency responsible for providing notice, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides the employer with

documentation evidencing the judicial proceeding from any of the following entities:

(1) The court or government agency setting the hearing.

(2) The district attorney or prosecuting attorney's office.

(3) The victim/witness office that is advocating on behalf of the victim.

(d) An employee who is absent from work pursuant to subdivision (b) may elect to use the employee's accrued paid vacation time, personal leave time, sick leave time, compensatory time off that is otherwise available to the employee, or unpaid leave time, unless otherwise provided by a collective bargaining agreement, for an absence pursuant to subdivision (b). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(e) An employer shall keep confidential any records regarding the employee's absence from work pursuant to subdivision (b).

(f) An employer may not discharge from employment or in any manner discriminate against an employee, in compensation or other terms, conditions, or privileges of employment, including, but not limited to the loss of seniority or precedence, because the employee is absent from work pursuant to this section.

(g) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (b) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (b) shall have one year from the date of occurrence of the violation to file his or her complaint.

(h) District attorney and victim/witness offices are encouraged to make information regarding this section available for distribution at their offices.

(Added by Stats. 2003, Ch. 630, Sec. 1. Effective January 1, 2004.)

230.3. (a) An employer shall not discharge or in any manner discriminate against an employee for taking time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or emergency rescue personnel.

(b) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has taken time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or emergency rescue personnel shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Subdivisions (a) and (b) of this section shall not apply to any public safety agency or provider of emergency medical services if, as determined by the employer, the employee's absence would hinder the availability of public safety or emergency medical services.

(2) An employee who is a health care provider shall notify his or her employer at the time the employee becomes designated as emergency rescue personnel and when the employee is notified that he or she will be deployed as a result of that designation.

(d) (1) For purposes of this section, "volunteer firefighter" shall have the same meaning as the term "volunteer" in Section 50952 of the Government Code.

(2) For purposes of this section, "emergency rescue personnel" means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, or of a sheriff's department, police department, or a private fire department, or of a disaster medical response entity sponsored or requested by this state, whether that person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing emergency services as defined by Section 1799.107 of the Health and Safety Code.

(3) For purposes of this section, "health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

(Amended by Stats. 2014, Ch. 343, Sec. 1. Effective January 1, 2015.)

230.4. (a) An employee who performs duty as a volunteer firefighter, a reserve peace officer, or as emergency rescue personnel, as defined in Section 230.3, and who works for an employer employing 50 or more employees, shall be permitted to take temporary leaves of absence, not to exceed an aggregate of 14 days per calendar year, for the purpose of engaging in fire, law enforcement, or emergency rescue training.

(b) An employee who works for an employer employing 50 or more employees who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has taken time off to engage in fire, law enforcement, or emergency rescue training as provided in subdivision (a), is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(c) An employee seeking reinstatement and reimbursement pursuant to this section may file a complaint with the Division of Labor Standards Enforcement in accordance with Section 98.7 and, upon receipt of this type of complaint, the Labor Commissioner shall proceed as provided in that section.

(Amended by Stats. 2014, Ch. 71, Sec. 108. Effective January 1, 2015.)

230.5. (a) (1) An employer shall not discharge or in any manner discriminate or retaliate against an employee who is a victim of an offense listed in paragraph (2) for taking time off from work, upon the victim's request, to appear in court to be heard at any proceeding, including any delinquency proceeding, involving a postarrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue.

(2) The offenses include all of the following:

(A) Vehicular manslaughter while intoxicated, as defined in subdivision (b) of Section 191.5 of the Penal Code.

(B) Felony child abuse likely to produce great bodily harm or a death, as defined in Section 273a of the Penal Code.

(C) Assault resulting in the death of a child under eight years of age, as defined in Section 273ab of the Penal Code.

(D) Felony domestic violence, as defined in Section 273.5 of the Penal Code.

(E) Felony physical abuse of an elder or dependent adult, as defined in subdivision (b) of Section 368 of the Penal Code.

(F) Felony stalking, as defined in Section 646.9 of the Penal Code.

(G) Solicitation for murder, as defined in subdivision (b) of Section 653f of the Penal Code.

(H) A serious felony, as defined in subdivision (c) of Section 1192.7 of the Penal Code.

(I) Hit-and-run causing death or injury, as defined in Section 20001 of the Vehicle Code.

(J) Felony driving under the influence causing injury, as defined in Section 23153 of the Vehicle Code.

(K) Sexual assault as set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288.5, 288a, 289, or 311.4 of the Penal Code.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of an offense specified in subdivision (a).

(B) A court order protecting or separating the employee from the perpetrator of an offense specified in subdivision (a), or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an offense specified in subdivision (a).

(3) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee may file a complaint with the division based upon a violation of subdivision (a) within one year from the date of occurrence of the violation.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in this section. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(f) For purposes of this section, "victim" means any person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parent, child, sibling, or guardian.

(Added by Stats. 2013, Ch. 756, Sec. 1. Effective January 1, 2014.)

230.7. (a) No employer shall discharge or in any manner discriminate against an employee who is the parent or guardian of a pupil for taking time off to appear in the school of a pupil pursuant to a request made under Section 48900.1 of the Education Code, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is requested to appear in the school.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has taken time off to appear in the school of a pupil pursuant to a request made under Section 48900.1 of the Education Code shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

(Added by Stats. 1989, Ch. 213, Sec. 2.)

230.8. (a) (1) An employer who employs 25 or more employees working at the same location shall not discharge or in any way discriminate against an employee who is a parent of one or more children of the age to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider, for taking off up to 40 hours each year, for the purpose of either of the following child-related activities:

(A) To find, enroll, or reenroll his or her child in a school or with a licensed child care provider, or to participate in activities of the school or licensed child care provider of his or her child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence of the employee. Time off pursuant to this subparagraph shall not exceed eight hours in any calendar month of the year.

(B) To address a child care provider or school emergency, if the employee gives notice to the employer.

(2) If more than one parent of a child is employed by the same employer at the same worksite, the entitlement under paragraph (1) of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the employer, such that another parent may take a planned absence simultaneously as to that same child under the conditions described in paragraph (1) only if he or she obtains the employer's approval for the requested time off.

(b) (1) The employee shall utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section, unless otherwise provided by a collective bargaining agreement entered into before January 1, 1995, and in effect on that date. An employee also may utilize time off without pay for this purpose, to the extent made available by his or her employer. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition that is agreed to on or after January 1, 1995.

(2) Notwithstanding paragraph (1), in the event that all permanent, full-time employees of an employer are accorded vacation during the same period of time in the calendar year, an

employee of that employer may not utilize that accrued vacation benefit at any other time for purposes of the planned absence authorized by this section.

(c) The employee, if requested by the employer, shall provide documentation from the school or licensed child care provider as proof that he or she engaged in child-related activities permitted in subdivision (a) on a specific date and at a particular time. For purposes of this subdivision, "documentation" means whatever written verification of parental participation the school or licensed child care provider deems appropriate and reasonable.

(d) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment by his or her employer because the employee has taken time off to engage in child-related activities permitted in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

(e) For purposes of this section, the following terms have the following meanings:

(1) "Parent" means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child.

(2) "Child care provider or school emergency" means that an employee's child cannot remain in a school or with a child care provider due to one of the following:

(A) The school or child care provider has requested that the child be picked up, or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up from the school or child care provider.

(B) Behavioral or discipline problems.

(C) Closure or unexpected unavailability of the school or child care provider, excluding planned holidays.

(D) A natural disaster, including, but not limited to, fire, earthquake, or flood.

(Amended by Stats. 2015, Ch. 802, Sec. 1. Effective January 1, 2016.)

231. Any employer who requires, as a condition of employment, that an employee have a driver's license shall pay the cost of any physical examination of the employee which may be required for issuance of such license, except where the physical examination was taken prior to the time the employee applied for such employment with the employer.

(Added by Stats. 1971, Ch. 1279.)

232. No employer may do any of the following:

(a) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages.

(b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages.

(c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.

(Amended by Stats. 2002, Ch. 934, Sec. 1. Effective January 1, 2003.)

232.5. No employer may do any of the following:

(a) Require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions.

(b) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose information about the employer's working conditions.

(c) Discharge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer's working conditions.

(d) This section is not intended to permit an employee to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege without the consent of his or her employer.

(Added by Stats. 2002, Ch. 934, Sec. 2. Effective January 1, 2003.)

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(2) "Family member" has the same meaning as defined in Section 245.5.

(3) (A) "Sick leave" means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the reasons specified in subdivision (a) of Section 246.5.

(B) "Sick leave" does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.

(c) An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce this section in accordance with Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other law.

(Amended by Stats. 2015, Ch. 802, Sec. 2. Effective January 1, 2016.)

234. An employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead

to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

(Added by Stats. 2002, Ch. 1107, Sec. 1. Effective January 1, 2003.)

238. (a) If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a period of 30 days after the time to appeal therefrom has expired and no appeal therefrom is pending, the employer shall not continue to conduct business in this state, including conducting business using the labor of another business, contractor, or subcontractor instead of the labor of an employee, unless the employer has obtained a bond from a surety company admitted to do business in this state and has filed a copy of that bond with the Labor Commissioner. The bond shall be effective and maintained until satisfaction of all judgments for nonpayment of wages. The principal sum of the bond shall not be less than the following:

(1) Fifty thousand dollars ($50,000) if the unsatisfied portion of the judgment is no more than five thousand dollars ($5,000).

(2) One hundred thousand dollars ($100,000) if the unsatisfied portion of the judgment is more than five thousand dollars ($5,000) and no more than ten thousand dollars ($10,000).

(3) One hundred fifty thousand dollars ($150,000) if the unsatisfied portion of the judgment is more than ten thousand dollars ($10,000).

(b) In lieu of filing and maintaining the bond required by this section, the employer may provide the Labor Commissioner with a notarized copy of an accord reached with an individual holding an unsatisfied final judgment. If the accord provides for the judgment to be paid in installments, and an installment payment is not made, the employer is no longer excused from satisfying the bond requirement of this section.

(c) (1) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be for the benefit of any employee damaged by his or her employer's failure to pay wages, including any interest, penalties, and attorney's fees.

(2) This section shall not require a bond in favor of employees covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, and a waiver of the bond required by this section.

(3) Thirty days prior to the cancellation or termination of any bond required by this section, the surety shall send written notice to both the employer and the Labor Commissioner, identifying the bond and the date of the cancellation or termination. If the bond is terminated or canceled, the employer shall obtain a new surety bond and file a copy of that bond with the Labor Commissioner to remain in compliance with this section.

(d) For purposes of this section, a judgment also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired and no petition is pending.

(e) Subject to subdivision (f), an employer similar in operation and ownership to an employer with an unsatisfied final judgment for unpaid wages, upon receiving written notice of the unsatisfied judgment, shall be deemed the same employer for purposes of this section if (1) the employees of the successor employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors or (2) if the new entity has substantially the same production process or operations, produces substantially the same products or offers substantially the same services, and has substantially the same body of customers.

(f) Any employer, or other person acting on behalf of an employer, that conducts business in violation of this section shall be subject to a civil penalty of two thousand five hundred dollars ($2,500). Any employer that has previously been assessed and failed to pay a penalty pursuant to this section shall be subject to an additional penalty of one hundred dollars ($100) for each calendar day that the employer conducts business in violation of this section; however, this additional amount shall not exceed one hundred thousand dollars ($100,000). These civil penalties may be assessed under a citation issued by the Labor Commissioner and the procedures for issuing, contesting, and enforcing judgments shall be the same as those set forth in Section 1197.1. The Labor Commissioner shall not assess these civil penalties against an entity determined to be a successor employer pursuant to subdivision (e) within the first 30 days after notice of the judgment.

(Added by Stats. 2015, Ch. 803, Sec. 4. Effective January 1, 2016.)

238.1. (a) Where an employer is conducting business in violation of Section 238, the Labor Commissioner may issue and serve on that employer a stop order prohibiting the use of employee labor by that employer until the employer's compliance with Section 238, provided that the stop order would not compromise or imperil public safety or the life, health, and care of vulnerable individuals. The stop order shall also prohibit the employer from continuing to provide services by conducting business using the labor of another business, contractor, or subcontractor. The stop order shall become effective immediately upon the service of the order. Any employee affected by the work stoppage shall be paid by the employer for such time lost, not exceeding 10 days, pending compliance by the employer. The employer may protest the stop order by making and filing with the Labor Commissioner a written request for a hearing within 20 days after service of the stop order. The hearing shall be held within five days from the date of filing the request. The Labor Commissioner shall notify the employer of the time and place of the hearing by mail. At the conclusion of the hearing, the stop order shall be immediately affirmed or dismissed, and within 24 hours thereafter, the Labor Commissioner shall issue and serve on all parties to the hearing by registered or certified mail a written notice of findings, accompanied by written findings. A writ of mandate may be taken from the findings to the appropriate superior court. The writ shall be taken within 45 days after the mailing of the notice of findings accompanied by written findings. The Labor Commissioner may file an action in superior court for injunctive and other appropriate relief to enforce the stop order and shall be entitled to recovery of costs and attorney's fees if any relief is obtained by the Labor Commissioner.

(b) Failure of an employer, owner, director, officer, or managing agent of the employer to observe a stop order issued and served upon him or her pursuant to this section is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both. For the purposes of this section, the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(Added by Stats. 2015, Ch. 803, Sec. 5. Effective January 1, 2016.)

238.2. (a) The Labor Commissioner may create a lien on any real property in California of an employer, or a successor employer pursuant to subdivision (e) of Section 238, that is

conducting business in violation of Section 238 for the full amount of any wages, interest, and penalties claimed to be owed to any employee. To the extent attorney's fees are specifically allowed to be recovered by this code, such as by, but not limited to, subdivision (f) of Section 2673.1 and Section 2802, during a hearing pursuant to Section 98, the Labor Commissioner may include that amount in the lien.

(b) The Labor Commissioner may create the lien provided in this section by recording a certificate of lien using the same procedure applicable under subdivision (g) of Section 98.2.

(c) The Labor Commissioner shall issue a certificate of release, releasing the lien created under this section, upon final satisfaction of any judgment entered in favor of the employee, upon adjudication of the claim in favor of the employer, upon the filing of a surety bond pursuant to Section 238. The certificate of release may be recorded by the employer at the employer's expense.

(d) Unless the lien is satisfied or released, a lien under this section shall continue until 10 years from the date of its creation.

(e) Prior to using the lien procedure in this section, the Labor Commissioner shall provide at least 20 days' notice to the employer. The notice shall advise the employer of the Labor Commissioner's authority to create a lien on the property to secure payment of the claim.

(f) The Labor Commissioner may serve the notice with and in the same manner as the order, decision, and award in accordance with Section 98.1.

(g) A lien created pursuant to this section is in addition to any other lien rights available to an employee or to the Labor Commissioner and shall not be construed to limit those rights.

(Added by Stats. 2015, Ch. 803, Sec. 6. Effective January 1, 2016.)

238.3. (a) The Labor Commissioner may create a lien on any personal property in California of an employer that conducts business in violation of Section 238 for the full amount of any wages, interest, and penalties claimed to be owed to any employee. To the extent attorney's fees are specifically allowed to be recovered by this code, such as by, but not limited to, subdivision (f) of Section 2673.1 and Section 2802, during a hearing pursuant to Section 98, the Labor Commissioner may include that amount in the lien.

(b) The Labor Commissioner may create the lien provided in this section by filing a notice of lien with the Secretary of State on the standard form of initial financing statement pursuant to Section 9521 of the Commercial Code. The standard form shall be completed in the following manner:

(1) The Labor Commissioner shall be identified as the secured party.

(2) The employer shall be identified as the debtor.

(3) The description of the collateral shall include the following statements:

(A) A statement of the Labor Commissioner's demand for payment of the wages, penalties, interest, and attorney's fees, if applicable. The statement shall specify the amount owed to the employee, and if the amount is estimated, shall provide an explanation for the basis of the estimate.

(B) A general statement of the kind of work furnished by the employee and the dates of employment.

(c) For the purpose of the Secretary of State's index pursuant to Sections 9515, 9516, and 9522 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9519 or 9528 of the Commercial Code, the Secretary of State shall treat a notice of lien pursuant to this section as a financing statement.

(d) The lien attaches to all personal property that is owned by the employer at the time of the filing of the notice of lien, or that is subsequently acquired by the employer, that can be made subject to a security interest under the Commercial Code.

(e) The Labor Commissioner shall file a termination statement, releasing the lien created under this section, upon final satisfaction of any judgment entered in favor of the employee, upon adjudication of the claim in favor of the employer, upon the filing of a surety bond in a form acceptable to the Labor Commissioner sufficient to secure the claim.

(f) The notice of claim of lien to which the termination statement relates ceases to be effective upon the filing of a termination statement with the office of the Secretary of State. A termination statement for a notice of lien may be filed in the same manner as a termination statement for a financing statement filed pursuant to Section 9513 of the Commercial Code.

(g) Unless the lien is satisfied or released, a lien under this section shall continue until 10 years from the date of its creation.

(h) Prior to using this lien procedure in this section, the Labor Commissioner shall provide at least 20 days' preliminary notice to the employer. The preliminary notice shall advise the employer of the nature and amount of the employee's claim and of the Labor Commissioner's authority to create a lien on the employer's personal property to secure payment of the claim.

(i) The Labor Commissioner shall serve the preliminary notice on the employer by certified mail with return receipt requested, evidenced by a certificate of mailing, postage prepaid, addressed to the employer at the employer's residence or place of business. The Labor Commissioner shall serve a copy of any notice of lien on the employer in the same manner.

(j) Upon entry of a final order, decision, or award issued in an appeal pursuant to Section 98.2 against the employer for unpaid wages, or entry of a final judgment against the employer for unpaid wages in an action filed in the superior court, the Labor Commissioner may bring an action to foreclose on any lien created pursuant to this section.

(k) A lien created pursuant to this section in addition to any other lien rights available to an employee or to the Labor Commissioner shall not be construed to limit those rights.

(Added by Stats. 2015, Ch. 803, Sec. 7. Effective January 1, 2016.)

238.4. (a) If an employer in the long-term care industry that is also required to obtain a license from the State Department of Public Health or the State Department of Social Services pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, is found to be in violation of Section 238, the State Department of Public Health or the State Department of Social Services may deny a new license or the renewal of an existing license for that employer.

(b) If the Labor Commissioner finds that an employer in the long-term care industry is conducting business in violation of Section 238, the Labor Commissioner shall notify the State Department of Public Health or the State Department of Social Services.

(c) For purposes of this section "long-term care" means the operation of a skilled nursing facility, intermediate care facility, congregate living health facility, hospice facility, adult residential facility, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, continuing care retirement community, home health agency,

or home care organization, as those terms are used in Division 2 (commencing with Section 1200) of the Health and Safety Code.

(Added by Stats. 2015, Ch. 803, Sec. 8. Effective January 1, 2016.)

238.5. (a) (1) Any individual or business entity, regardless of its form, that, as part of its business, contracts for services in the property services or long-term care industries shall be jointly and severally liable for any unpaid wages, including interest, where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the Labor Commissioner in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract.

(2) The issue of joint and several liability under this section shall be determined (A) in a proceeding under Section 98 if the individual or contracting business is provided notice in the administrative complaint alleging such liability and named a defendant in the course of the Section 98 proceeding, (B) in an administrative proceeding brought by the Labor Commissioner to investigate, prosecute, or recover unpaid wages and interest pursuant to a citation, or in a court action brought by the Labor Commissioner, if the contracting individual or business is provided preliminary notice by the Labor Commissioner of joint and several liability under this section at least 30 days prior to issuance of a citation, or filing of a court action, or (C) by a court in an action pursuant to Section 98.2. No action for a violation or enforcement of this section shall be brought under Part 13 (commencing with Section 2698) of Division 2.

(b) The joint and several liability provided by this section shall not apply to unpaid wages owed to employees covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, and a waiver of the joint and several liability provided by this section.

(c) An employer that contracts to provide services in the property services or long-term care industries shall, prior to entering into such a contract, provide written notice to the other party to the prospective contract of any unsatisfied final judgments against the employer for nonpayment of wages. The notice shall also provide the text of this section. The failure of the employer to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

(d) An employer that contracts to provide services in the property services or long-term care industries shall provide, within 30 days of the entry of the judgment, written notice of any unsatisfied final judgments against the employer for nonpayment of wages to any parties with which the employer is presently under contract to provide services in the property services or long-term care industries. The failure of the employer to provide notice under this subdivision shall not be a defense to the joint and several liability provided by this section.

(e) For the purposes of this section, the following apply:

(1) "Property services" means janitorial, security guard, valet parking, landscaping, and gardening services.

(2) "Long-term care" has the same definition as in Section 238.4.

(f) This section shall not be interpreted to impose joint liability on an individual or the owner of a home-based business, for any property services, to the extent that the property services are provided at the individual or home-based business owner's primary residence, provided that the primary residence does not have multiple housing units.

(Added by Stats. 2015, Ch. 803, Sec. 9. Effective January 1, 2016.)

240. (a) If any employer has been convicted of a violation of any provision of this article, or if any judgment against an employer for nonpayment of wages remains unsatisfied for a period of 10 days after the time to appeal therefrom has expired, and no appeal therefrom is then pending, the Labor Commissioner may require the employer to deposit a bond in such sum as the Labor Commissioner may deem sufficient and adequate in the circumstances, to be approved by the Labor Commissioner. The bond shall be payable to the Labor Commissioner and shall be conditioned that the employer shall, for a definite future period, not exceeding two years, pay the employees in accordance with the provisions of this article, and shall be further conditioned upon the payment by the employer of any judgment which may be recovered against the employer pursuant to the provisions of this article.

(b) If an order to post a bond issued against an employer under this section remains unsatisfied for a period of 10 days after the time to appeal therefrom has expired, and no appeal from the order is then pending, the Labor Commissioner may require the employer to provide an accounting of assets of the employer, including a list of all bank accounts, accounts receivable, personal property, real property, automobiles or other vehicles, and any other assets, in a form and manner as prescribed by the Labor Commissioner. An employer shall provide an amended accounting of assets, if ordered by the Labor Commissioner to do so. If, within 10 days after a demand for an accounting of assets, made by certified or registered mail, the employer fails to provide an accounting, or if the employer fails to provide an amended accounting after receiving a demand by the Labor Commissioner to do so, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against such employer to compel the employer to furnish the accounting. An employer who fails to provide an accounting as required by this subdivision shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000).

(c) If, within 10 days after demand for the bond, which demand may be made by mail, the employer fails to deposit the bond, the Labor Commissioner may bring an action in the name and on behalf of the people of the State of California against the employer in a court of competent jurisdiction to compel the employer to furnish the bond or to cease doing business until the employer has done so. The employer has the burden of proving either that the bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond, and that the bond is reasonably necessary or proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with the provisions of this article, the court may enjoin the employer, whether an individual, partnership, corporation, company, trust, or association, and such other person or persons as may have been or may be concerned with or in any way participating in the failure to pay the wages resulting in the conviction or in the judgment, from doing business until the requirement is met, and make other and further orders appropriate to compel compliance with the requirement.

(Amended by Stats. 2011, Ch. 655, Sec. 5. Effective January 1, 2012.)

243. (a) If, within 10 years of either a conviction for a violation of this article or failing to satisfy a judgment for nonpayment of wages, or of both, it is alleged that an employer on a second occasion has been convicted of again violating this article or is failing to satisfy a judgment for nonpayment of wages, an employee or the employee's legal representative, an attorney licensed to practice law in this state, may, on behalf of himself

or herself and others, bring an action in a court of competent jurisdiction for a temporary restraining order prohibiting the employer from doing business in this state unless the employer deposits with the court a bond to secure compliance by the employer with this article or to satisfy the judgment for nonpayment of wages.

(b) Upon the filing of an affidavit that, to the satisfaction of the court, shows reasonable proof that an employer, for the second time within 10 years, has been convicted of violating this article or has failed to satisfy a judgment for the nonpayment of wages, or both, the court may grant an order that prohibits the employer within 30 days from conducting any business within the state unless the employer deposits a bond payable to the Labor Commissioner, with the condition that the employer make wage payments in accordance with this article, or that the employer pay any unsatisfied judgment for nonpayment of wages, or both. The court shall order that the bond be on deposit with the Labor Commissioner at all times within a five-year period from the date of the order, that the employer employs more than 10 employees. The court shall order that the bond be in an amount equal to twenty-five thousand dollars ($25,000) or 25 percent of the weekly gross payroll of the employer at the time of the posting of the bond, whichever is greater, and that the term of the bond be for the duration of the service of the employee who brought the action, until past due wages have been paid, or until satisfaction of all judgments for nonpayment of wages. The bond shall also be payable for wages, interest on wages and for any damages arising from any violation of orders of the Industrial Welfare Commission, and for any other monetary relief awarded to an employee as a result of a violation of this code. To aid in the enforcement of this section, upon a request by the Labor Commissioner or an employee bringing an action pursuant to this section, the court may additionally require the employer to provide an accounting of assets of the employer, including a list of all bank accounts, accounts receivable, personal property, real property, automobiles or other vehicles, and any other assets, in a form and manner as prescribed by the court. An employer shall provide an amended accounting of assets if ordered by the court to do so. If, within 10 days after a demand for an accounting of assets, which demand may be made by certified or registered mail, the employer shall fail to provide an accounting, or if the employer fails to provide an amended accounting being ordered to do so, the court may take all appropriate action to enforce its order, including the imposition of appropriate sanctions.

(c) For purposes of subdivision (b), an employer shall be deemed to have been convicted of having violated this article or to have failed to satisfy a judgment for the second time within 10 years if, to secure labor or personal services in connection with his or her business, the employer uses the services of an agent, contractor, or subcontractor who is convicted of a violation of this article or fails to satisfy a judgment for wages respecting those employees, or both, but only if the employer had actual knowledge of the person's failure to pay wages. In issuing a temporary restraining order pursuant to this section, the court, in determining the amount and term of the bond, shall count the agent's, contractor's, or subcontractor's employees as part of the employer's total workforce. This subdivision shall not apply where a temporary restraining order against the agent, contractor, or subcontractor as an employer has been issued pursuant to subdivision (b).

(d) An employer who, for the third time within 10 years of the first occurrence, is alleged to have violated this article or to have failed to satisfy a judgment for nonpayment of wages, or both, shall be deemed by the court to have commenced a new five-year period for which the posting of a bond may be ordered in accordance with subdivision (b), except that the court may, in its discretion, require the posting of a bond in a greater amount as it determines appropriate under the circumstances.

(e) A former employee who was a party to an earlier action against an employer in which a judgment for the payment of wages was obtained, and who alleges that the employer has failed to satisfy the judgment for the payment of wages, in addition to any other available remedy, may petition the court pursuant to subdivision (b) for a temporary restraining order against the employer to cease doing business in this state unless the employer posts a bond with the court.

(f) Actions brought pursuant to this section shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(g) Nothing in this section shall be construed to impose any mandatory duties on the Labor Commissioner.

(Amended by Stats. 2011, Ch. 655, Sec. 6. Effective January 1, 2012.)

244. (a) An individual is not required to exhaust administrative remedies or procedures in order to bring a civil action under any provision of this code, unless that section under which the action is brought expressly requires exhaustion of an administrative remedy. This subdivision shall not be construed to affect the requirements of Section 2699.3.

(b) Reporting or threatening to report an employee's, former employee's, or prospective employee's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee, former employee, or prospective employee, to a federal, state, or local agency because the employee, former employee, or prospective employee exercises a right under the provisions of this code, the Government Code, or the Civil Code constitutes an adverse action for purposes of establishing a violation of an employee's, former employee's, or prospective employee's rights. As used in this subdivision, "family member" means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild related by blood, adoption, marriage, or domestic partnership.

(Added by Stats. 2013, Ch. 577, Sec. 4. Effective January 1, 2014.)

Article 1.5. Paid Sick Days

(Article 1.5 added by Stats. 2014, Ch. 317, Sec. 3.)

245. (a) This article shall be known and may be cited as the Healthy Workplaces, Healthy Families Act of 2014.

(b) The provisions of this article are in addition to and independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an aggrieved person.

(Added by Stats. 2014, Ch. 317, Sec. 3. Effective January 1, 2015.)

245.5. As used in this article:

(a) "Employee" does not include the following:

(1) An employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those employees, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime

hours worked, and regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

(2) An employee in the construction industry covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and regular hourly pay of not less than 30 percent more than the state minimum wage rate, and the agreement either (A) was entered into before January 1, 2015, or (B) expressly waives the requirements of this article in clear and unambiguous terms. For purposes of this subparagraph, "employee in the construction industry" means an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and other similar or related occupations or trades.

(3) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to the provisions of Title II of the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.), provided that the individual is provided with compensated time off equal to or exceeding the amount established in paragraph (1) of subdivision (b) of Section 246.

(4) An employee of the state, city, county, city and county, district, or any other public entity who is a recipient of a retirement allowance and employed without reinstatement into his or her respective retirement system pursuant to either Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, or Article 8 (commencing with Section 31680) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(b) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(c) "Family member" means any of the following:

(1) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(d) "Health care provider" has the same meaning as defined in paragraph (6) of subdivision (c) of Section 12945.2 of the Government Code.

(e) "Paid sick days" means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in Section 246.5.

(Amended by Stats. 2016, Ch. 4, Sec. 1. Effective January 1, 2017.)

246. (a) (1) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

(2) On and after July 1, 2018, a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in subdivision (e) and subject to the rate of accrual in paragraph (1) of subdivision (b).

(b) (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

(c) An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.

(d) Accrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. The term "full amount of leave" means three days or 24 hours.

(e) For a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, the term "full amount of leave" is defined as follows:

(1) Eight hours or one day in each year of employment, calendar year, or 12-month period beginning July 1, 2018.

(2) Sixteen hours or two days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached thirteen dollars ($13) per hour.

(3) Twenty-four hours or three days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached fifteen dollars ($15) per hour.

(f) An employer is not required to provide additional paid sick days pursuant to this section if the employer has a paid leave

policy or paid time off policy, the employer makes available an amount of leave applicable to employees that may be used for the same purposes and under the same conditions as specified in this section, and the policy satisfies one of the following:

(1) Satisfies the accrual, carryover, and use requirements of this section.

(2) Provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy or paid time off policy that used an accrual method different than providing one hour per 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has no less than one day or eight hours of accrued sick leave or paid time off within three months of employment of each calendar year, or each 12-month period, and the employee was eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment. If an employer modifies the accrual method used in the policy it had in place prior to January 1, 2015, the employer shall comply with any accrual method set forth in subdivision (b) or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period. This section does not prohibit the employer from increasing the accrual amount or rate for a class of employees covered by this subdivision.

(3) Notwithstanding any other law, sick leave benefits provided pursuant to the provisions of Sections 19859 to 19868.3, inclusive, of the Government Code, or annual leave benefits provided pursuant to the provisions of Sections 19858.3 to 19858.7, inclusive, of the Government Code, or by provisions of a memorandum of understanding reached pursuant to Section 3517.5 that incorporate or supersede provisions of Section 19859 to 19868.3, inclusive, or Sections 19858.3 to 19858.7, inclusive of the Government Code, meet the requirements of this section.

(g) (1) Except as specified in paragraph (2), an employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.

(2) If an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring, subject to the use and accrual limitations set forth in this section. An employer is not required to reinstate accrued paid time off to an employee that was paid out at the time of termination, resignation, or separation of employment.

(h) An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

(i) An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare Commission only on and after January 21, 2016.

(j) An employer has no obligation under this section to allow an employee's total accrual of paid sick leave to exceed 48 hours or 6 days, provided that an employee's rights to accrue and use paid sick leave are not limited other than as allowed under this section.

(k) An employee may determine how much paid sick leave he or she needs to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(m) If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable.

(n) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

(o) The State Department of Social Services, in consultation with stakeholders, shall convene a workgroup to implement paid sick leave for in-home supportive services providers as specified in this section. This workgroup shall finish its implementation work by November 1, 2017, and the State Department of Social Services shall issue guidance such as an all-county letter or similar instructions by December 1, 2017.

(p) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may implement, interpret, or make specific this section by means of an all-county letter, or similar instructions, without taking any regulatory action.

(Amended by Stats. 2016, Ch. 4, Sec. 2. Effective January 1, 2017.)

246.5. (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

(2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(b) An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days.

(c) (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to

use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.

(B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.

(C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

(Added by Stats. 2014, Ch. 317, Sec. 3. Effective January 1, 2015.)

247. (a) In each workplace of the employer, the employer shall display a poster in a conspicuous place containing all the information specified in subdivision (b). The Labor Commissioner shall create a poster containing this information and make it available to employers.

(b) The poster shall state all of the following:

(1) An employee is entitled to accrue, request, and use paid sick days.

(2) The amount of sick days provided for by this article.

(3) The terms of use of paid sick days.

(4) That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

(c) An employer who willfully violates the posting requirements of this section is subject to a civil penalty of not more than one hundred dollars ($100) per each offense.

(Added by Stats. 2014, Ch. 317, Sec. 3. Effective January 1, 2015.)

247.5. (a) An employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174. An employer shall make these records available to an employee in the same manner as described in Section 226. If an employer does not maintain adequate records pursuant to this section, it shall be presumed that the employee is entitled to the maximum number of hours accruable under this article, unless the employer can show otherwise by clear and convincing evidence.

(b) Notwithstanding any other provision of this article, an employer is not obligated to inquire into or record the purposes for which an employee uses paid leave or paid time off.

(Amended by Stats. 2015, Ch. 67, Sec. 3. Effective July 13, 2015.)

248.5. (a) The Labor Commissioner shall enforce this article, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing.

(b) (1) If the Labor Commissioner, after a hearing that contains adequate safeguards to ensure that the parties are afforded due process, determines that a violation of this article has occurred, he or she may order any appropriate relief, including reinstatement, backpay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee or other person whose rights under this article were violated.

(2) If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars ($250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars ($4,000), shall be included in the administrative penalty.

(3) If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars ($50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars ($4,000).

(c) Where prompt compliance by an employer is not forthcoming, the Labor Commissioner may take any appropriate enforcement action to secure compliance, including the filing of a civil action. In compensation to the state for the costs of investigating and remedying the violation, the commissioner may order the violating employer to pay to the state a sum of not more than fifty dollars ($50) for each day or portion of a day a violation occurs or continues for each employee or other person whose rights under this article were violated.

(d) An employee or other person may report to the Labor Commissioner a suspected violation of this article. The commissioner shall encourage reporting pursuant to this subdivision by keeping confidential, to the maximum extent permitted by applicable law, the name and other identifying information of the employee or person reporting the violation. However, the commissioner may disclose that person's name and identifying information as necessary to enforce this article or for other appropriate purposes, upon the authorization of that person.

(e) The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars ($4,000), as liquidated damages in the amount of fifty dollars ($50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars ($250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney's fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs.

(f) In an administrative or civil action brought under this article, the Labor Commissioner or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

(g) The remedies, penalties, and procedures provided under this article are cumulative.

(h) An employer shall not be assessed any penalty or liquidated damages under this article due to an isolated and unintentional

payroll error or written notice error that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

(Added by Stats. 2014, Ch. 317, Sec. 3. Effective January 1, 2015.)

249. (a) This article does not limit or affect any laws guaranteeing the privacy of health information, or information related to domestic violence or sexual assault, regarding an employee or employee's family member. That information shall be treated as confidential and shall not be disclosed to any person except to the affected employee, or as required by law.

(b) This article shall not be construed to discourage or prohibit an employer from the adoption or retention of a paid sick days policy more generous than the one required herein.

(c) This article does not lessen the obligation of an employer to comply with a contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous sick days to an employee than required herein.

(d) This article establishes minimum requirements pertaining to paid sick days and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick days, whether paid or unpaid, or that extends other protections to an employee.

(Added by Stats. 2014, Ch. 317, Sec. 3. Effective January 1, 2015.)

Article 2. Seasonal Labor

(Heading of Article 2 amended by Stats. 1945, Ch. 628.)

250. As used in this article "seasonal labor" means all labor performed by any person hired in this State to perform services outside of this State for a period greater than one month, where the wages are to be paid in this State, not at fixed intervals, but at the termination of such employment.

(Enacted by Stats. 1937, Ch. 90.)

251. This article shall not apply to wages earned by seamen or other persons, where payment is regulated by Federal statute.

(Enacted by Stats. 1937, Ch. 90.)

252. Upon application of either the employer or the employee, the wages earned in seasonal labor shall be paid in the presence of the Labor Commissioner, or his deputy or agent.

(Enacted by Stats. 1937, Ch. 90.)

253. The Labor Commissioner shall hear and decide all wage disputes arising in connection with seasonal labor and shall allow or reject any deductions made from such wages. He shall reject all deductions made for gambling and liquor debts incurred by the employee during such employment.

(Enacted by Stats. 1937, Ch. 90.)

254. After a final hearing by the Labor Commissioner, he shall file in the office of his division a copy of the findings of fact and his award.

(Enacted by Stats. 1937, Ch. 90.)

255. The amount of the award of the Labor Commissioner shall, in the absence of fraud, be conclusively presumed to be the amount of the wages due and unpaid to the employee at the time of the termination of the employment but shall be subject to review by the courts in the manner provided by the Code of Civil Procedure.

(Enacted by Stats. 1937, Ch. 90.)

256. The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

(Amended by Stats. 1983, Ch. 1096, Sec. 3.)

257. All provisions of Article 1 of this chapter, except sections 204, 205, 207, 208, 209, 210, 211 and 215 are applicable to this article.

(Enacted by Stats. 1937, Ch. 90.)

Article 3. Special Occupations

(Article 3 added by Stats. 1945, Ch. 628.)

270. No person, or agent or officer thereof, engaged in the business of extracting or of extracting and refining or reducing minerals other than petroleum, except persons having a free and unencumbered title to the fee of the property being worked and except mining partnerships in respect to the members of the partnership, shall fail or neglect, before commencing work in any period for which a single payment of wages is made, to have on hand or on deposit with a bank or trust company, in the county where such property is located or if there is no bank or trust company in the county, then in the bank or trust company nearest the property, cash or readily salable securities of a market value sufficient to pay the wages of every person employed on the mining property, or in connection therewith, for such period.

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

(Added by Stats. 1945, Ch. 628.)

270.5. (a) No person, agent or officer thereof, or logging contractor, or sawmill operations contractor, engaged in the business of logging or operating a sawmill for converting logs into lumber, except in the case of logging or sawmill operations of persons having a free and unencumbered title to the fee of real property in this state, of a market value sufficient to pay the wages of every person employed in connection with such operations in any period for which a single payment of wages is made, shall fail or neglect, before commencing work in any period for which such single payment of wages is made, or for four calendar weeks, whichever is the longer, to do one of the following:

(1) Have on hand or on deposit with a bank or trust company, in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period.

(2) Deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to the Labor Commissioner, conditioned upon the payment of all wages found by the Labor Commissioner to be due and unpaid in connection with such operations.

(b) The cash and securities on deposit referred to in subdivision (a) shall not be commingled with other deposits, securities or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. Such moneys so held in trust are not subject to the enforcement of a money judgment by any other creditor of the employer.

(c) Any person, agent or officer thereof, or logging contractor, or sawmill operations contractor, who violates this section is guilty of a misdemeanor.

(Amended by Stats. 1982, Ch. 497, Sec. 131. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

270.6. (a) No person, or agent or officer thereof, without a permanent and fixed place of business or residence in this state who uses or employs any person in the door-to-door selling of any merchandise, in any similar itinerant activity, or in any telephone solicitation, shall fail or neglect, before commencing work in any period for which any single payment of wages is made or for four calendar weeks, whichever is longer, to do any one of the following:

(1) Have on hand or on deposit with a bank or trust company in the county where the business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest these operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with these operations for that period described in this subdivision.

(2) Deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to the Labor Commissioner, conditioned upon the payment of all wages found to be due and unpaid in connection with these operations under any provision of this code.

(3) Deposit with the Labor Commissioner a time certificate of deposit indicating that the person, agent, or officer subject to this section has deposited with a bank or trust company cash payable to the order of the Labor Commissioner sufficient to pay the wages of every person employed in connection with these operations for that period described in this subdivision.

(b) The cash and securities on deposit referred to in subdivision (a) shall not be commingled with other deposits, securities, or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. The moneys so held in trust are not subject to enforcement of a money judgment by any other creditor of the employer.

(c) Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

(Amended by Stats. 2006, Ch. 538, Sec. 481. Effective January 1, 2007.)

271. No person, or agent or officer thereof, engaged in the business of promoting a theatrical enterprise where living individuals are used or employed in the presentation, except persons having a free and unencumbered title to the fee of the property on which the theatrical enterprise is produced, shall fail or neglect, before producing such enterprise in any period for which a single payment of wages is made, to have on hand or on deposit with a bank or trust company, in the county in which such enterprise is to be produced, or if there is no bank or trust company in the county, then in the bank or trust company nearest the place where such enterprise is produced, cash or readily salable securities of a market value sufficient to pay the wages of every individual used or employed in the production of such enterprise, or in connection therewith for such period. The provisions of this section shall not apply to the use or employment of individuals by a radio or television broadcasting enterprise; provided, there is on hand or on deposit with a bank or trust company in this State cash or readily salable securities of a market value sufficient to pay the wages of every individual used or employed in such enterprise, or in connection therewith.

Theatrical enterprise as used in this section means the production of any circus, vaudeville, carnival, revues, variety shows, musical comedies, operettas, opera, drama, theatrical, endurance contest, walkathon, marathon, derby, or other entertainments, exhibitions, or performances.

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

(Added by Stats. 1945, Ch. 628.)

272. Every person, agent, or officer thereof engaged in the businesses specified in Section 270, 270.5, 270.6, or 271, shall keep conspicuously posted upon the premises where persons are employed, a notice specifying the name and address of the bank or trust company where the required cash or readily salable securities are on deposit, or the name of the surety or sureties on the bond deposited pursuant to Section 270.5 or 270.6. Failure to keep the notice conspicuously posted is prima facie evidence of a violation of Section 270, 270.5, 270.6, or 271.

(Amended by Stats. 1965, Ch. 329.)

273. (a) The following definitions apply for purposes of this section:

(1) "All activities relating to an adverse license or registration action" includes, but is not limited to, all of the following which occur as a result of a failure to comply with this section:

(A) Denial of a new application or a renewal application for licensure or registration.

(B) Denial of reinstatement of a license or registration.

(C) Suspension of a license or registration.

(D) Assessment and recovery of civil penalties for knowingly providing false information in the statement required by paragraph (1) of subdivision (b).

(2) "Farm labor contractor" has the same meaning as set forth in Section 1682.

(3) "Final judgment issued by a court" means a judgment with respect to which all possibility of a direct attack, by way of appeal, motion for a new trial, or motion pursuant to Section 663 of the Code of Civil Procedure to vacate the judgment, has been exhausted and also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(4) "Garment manufacturer" means a person engaged in garment manufacturing as described in Section 2671.

(5) "Involving unpaid wages" means all amounts required to be paid by a final judgment, order, or accord involving a failure of the licensee or registrant to pay required wages.

(6) "Licensee" has the same meaning as set forth in Section 1682.

(7) "Registrant" means a person who holds a valid and unrevoked garment manufacturer registration.

(b) (1) The Labor Commissioner shall require an applicant for any of the following to submit a statement as to whether the applicant has satisfied all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages:

(A) Licensure as a farm labor contractor.

(B) Registration as a garment manufacturer.

(C) Renewal or reinstatement of a farm labor contractor license or a garment manufacturer registration.

(D) A change in the persons identified pursuant to Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) A person who knowingly provides false information in the statement submitted pursuant to this subdivision shall be subject to a civil penalty of no less than one thousand dollars ($1,000) and no more than twenty-five thousand dollars ($25,000), in addition to any civil remedies available to the Labor Commissioner. The penalty shall be recovered by the Labor Commissioner as part

of a hearing relating to a denial of an application for a license or registration, a hearing relating to a denial of a renewal or reinstatement of a license or registration, a hearing to contest the civil penalties assessed under this section by the Labor Commissioner, or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions.

(c) Notwithstanding any other provision of law, the Labor Commissioner shall not approve an application described in subdivision (b) if the statement submitted with it shows that the applicant has failed to satisfy all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages, as described in subdivision (b), unless the applicant submits either of the following to the Labor Commissioner:

(1) A bond or a cash deposit, in addition to any required by Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient to guarantee payment of all amounts due under a final judgment issued by a court or under a final order issued by the Labor Commissioner involving unpaid wages.

(2) A notarized accord between the applicant and the other parties to the judgment, order, or accord demonstrating that the applicant has satisfied all requirements imposed by the judgment, order, or accord involving unpaid wages.

(d) Notwithstanding any other provision of law, if the Labor Commissioner determines after granting an application described in subdivision (b) that the applicant made a false representation on the statement he or she submitted, the Labor Commissioner shall suspend the farm labor contractor license or garment manufacturer registration effective on the date of its issuance, renewal, or reinstatement. The license or registration shall remain suspended until the applicant satisfies either of the following requirements:

(1) Documents to the satisfaction of the Labor Commissioner that he or she has satisfied all requirements imposed by a final judgment issued by a court or by a final order of the Labor Commissioner or by an accord involving unpaid wages.

(2) Files with the Labor Commissioner a notarized accord as described in paragraph (2) of subdivision (c).

(e) (1) A licensee or registrant shall notify the Labor Commissioner in writing within 90 days of the date of a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord that imposes on the licensee or registrant requirements involving unpaid wages. If the licensee or registrant fails to comply with this notification requirement, the Labor Commissioner shall suspend the license or registration on the date that the Labor Commissioner is informed, or is made aware of, the judgment, order, or accord. The suspension shall remain in effect until the licensee or registrant satisfies either of the requirements described in subdivision (d).

(2) A licensee or registrant who notifies the Labor Commissioner of a judgment, order, or accord pursuant to paragraph (1), shall file with the notice a bond or a cash deposit meeting the criteria of paragraph (1) of subdivision (c).

(f) (1) The Labor Commissioner may reduce the amount of a bond or cash deposit required by this section upon proof, to the satisfaction of the Labor Commissioner, of partial satisfaction of the requirements imposed by a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord involving unpaid wages. The Labor Commissioner shall not reduce the bond or cash deposit amount below the balance of the entire amount involving unpaid wages. Upon full satisfaction of the requirements involving unpaid wages, the Labor Commissioner may terminate the bond or cash deposit requirement.

(2) Notwithstanding paragraph (1), within one year from the date of filing the bond or cash deposit pursuant to paragraph (1) of subdivision (c) or paragraph (2) of subdivision (e), a licensee or registrant shall submit a notarized accord between the licensee or registrant and the other parties to the judgment, order, or accord demonstrating satisfaction of all requirements imposed by the judgment, order, or accord involving unpaid wages. The Labor Commissioner shall suspend the license or registration of a person who fails to file the notarized accord within that timeframe. Notwithstanding paragraph (1) of subdivision (c), a person who has failed to file a notarized accord within the timeframe required by this paragraph shall have his or her license or registration reinstated only after demonstrating that he or she has satisfied all requirements imposed by a final judgment, order, or accord involving unpaid wages. As an alternative to payment in full of all debts involving unpaid wages, a person may submit a notarized copy of an accord between the licensee or registrant and the other parties to the accord.

(g) The failure of a licensee or registrant to maintain a bond required by this section or to abide by all requirements imposed on a licensee or registrant by an accord involving unpaid wages between the licensee or registrant and the other parties to the accord shall result in the automatic suspension of his or her license or registration.

(h) (1) A licensee or registrant shall not allow a person who is a judgment debtor in a final judgment issued by a court or in a final order issued by the Labor Commissioner involving unpaid wages that imposes requirements that have not been satisfied in their entirety to serve in a capacity described in Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) The Labor Commissioner shall suspend the license of a farm labor contractor or the registration of a garment manufacturer who violates the provisions of paragraph (1). The Labor Commissioner shall reinstate the license or registration upon the resignation of the person named as a judgment debtor or complete satisfaction of the unpaid wages requirements.

(i) A person whose license or registration is suspended pursuant to this section, who is denied issuance or reinstatement of a license or registration, or who has been assessed a civil penalty for knowingly providing false information in the statement required by paragraph (1) of subdivision (b) shall pay to the Labor Commissioner all reasonable costs incurred by the Labor Commissioner in all activities relating to the adverse license or registration action, commencing with the first notice issued by the Labor Commissioner that he or she has taken any adverse action under this section relative to a license or registration. The Labor Commissioner shall not reinstate a license or registration unless the person has paid all costs assessed by the Labor Commissioner or has entered into an accord with the Labor Commissioner that establishes a payment plan.

(j) This section shall not apply to an applicant for a farm labor contractor license or a garment manufacturer registration or to a licensee or registrant when the unpaid wages, as described by this section, have been discharged in a bankruptcy proceeding.

(Amended by Stats. 2010, Ch. 328, Sec. 151. Effective January 1, 2011.)

Chapter 2. Assignment of Wages

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

300. (a) As used in this section, the phrase "assignment of wages" includes the sale or assignment of, or giving of an order for, wages or salary but does not include an order or assignment made pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code or Section 3088 of the Probate Code.

(b) No assignment of wages, earned or to be earned, is valid unless all of the following conditions are satisfied:

(1) The assignment is contained in a separate written instrument, signed by the person by whom the wages or salary have been earned or are to be earned, and identifying specifically the transaction to which the assignment relates.

(2) Where the assignment is made by a married person, the written consent of the spouse of the person making the assignment is attached to the assignment. No such consent is required of any married person (A) after entry of a judgment decreeing a legal separation from such person's spouse or (B) if the married person and the spouse of the married person are living separate and apart after entry of an interlocutory judgment of dissolution of their marriage, if a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(3) Where the assignment is made by a minor, the written consent of a parent or guardian of the minor is attached to the assignment.

(4) Where the assignment is made by a person who is unmarried or who is an adult or who is both unmarried and an adult, a written statement by the person making the assignment, setting forth such facts, is attached to or included in the assignment.

(5) No other assignment exists in connection with the same transaction or series of transactions and a written statement by the person making the assignment to that effect is attached to or included in the assignment.

(6) A copy of the assignment and of the written statement provided for in paragraphs (2), (4), and (5), authenticated by a notary public, is filed with the employer, accompanied by an itemized statement of the amount then due to the assignee.

(7) At the time the assignment is filed with the employer, no other assignment of wages of the employee is subject to payment and no earnings withholding order against the employee's wages or salary is in force.

(c) Under any assignment of wages, a sum not to exceed 50 per centum of the assignor's wages or salary shall be withheld by, and be collectible from, the assignor's employer at the time of each payment of such wages or salary.

(d) The employer is entitled to rely upon the statements of fact in the written statement provided for in paragraphs (2), (4), and (5) of subdivision (b), without the necessity of inquiring into the truth thereof, and the employer shall incur no liability whatsoever by reason of any payments made by the employer to an assignee under any assignment in reliance upon the facts so stated.

(e) An assignment of wages to be earned is revocable at any time by the maker thereof. Any power of attorney to assign or collect wages or salary is revocable at any time by the maker thereof. No revocation of such an assignment or power of attorney is effective as to the employer until the employer receives written notice of revocation from the maker.

(f) No assignment of wages, earned or to be earned, is valid under any circumstances if the wages or salary earned or to be earned are paid under a plan for payment at a central place or places established under the provisions of Section 204a.

(g) This section does not apply to deductions which the employer may be requested by the employee to make for the payment of life, retirement, disability or unemployment insurance premiums, for the payment of taxes owing from the employee, for contribution to funds, plans or systems providing for death, retirement, disability, unemployment, or other benefits, for the payment for goods or services furnished by the employer to the employee or the employee's family at the request of the employee, or for charitable, educational, patriotic or similar purposes.

(h) No assignment of wages is valid unless at the time of the making thereof, such wages or salary have been earned, except for necessities of life and then only to the person or persons furnishing such necessities of life directly and then only for the amount needed to furnish such necessities.

(Amended by Stats. 1992, Ch. 163, Sec. 99. Effective January 1, 1993. Operative January 1, 1994, by Sec. 161 of Ch. 163.)

Chapter 3. Privileges and Perquisites

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

Article 1. Gratuities

(Article 1 enacted by Stats. 1937, Ch. 90.)

350. As used in this article, unless the context indicates otherwise:

(a) "Employer" means every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.

(b) "Employee" means every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is rendered on a commission, concessionaire, or other basis.

(c) "Employing" includes hiring, or in any way contracting for, the services of an employee.

(d) "Agent" means every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees.

(e) "Gratuity" includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any amounts paid directly by a patron to a dancer employed by an employer subject to Industrial Welfare Commission Order No. 5 or 10 shall be deemed a gratuity.

(f) "Business" means any business establishment or enterprise, regardless of where conducted.

(Amended by Stats. 2000, Ch. 876, Sec. 8. Effective January 1, 2001.)

351. No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card

shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

(Amended by Stats. 2000, Ch. 876, Sec. 9. Effective January 1, 2001.)

353. Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.

(Enacted by Stats. 1937, Ch. 90.)

354. Any employer who violates any provision of this article is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment for not exceeding 60 days, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 190. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

355. The Department of Industrial Relations shall enforce the provisions of this article. All fines collected under this article shall be paid into the State treasury and credited to the general fund.

(Enacted by Stats. 1937, Ch. 90.)

356. The Legislature expressly declares that the purpose of this article is to prevent fraud upon the public in connection with the practice of tipping and declares that this article is passed for a public reason and can not be contravened by a private agreement. As a part of the social public policy of this State, this article is binding upon all departments of the State.

(Enacted by Stats. 1937, Ch. 90.)

Article 2. Bonds and Photographs

(Article 2 enacted by Stats. 1937, Ch. 90.)

400. As used in this article, "applicant" means an applicant for employment.

(Enacted by Stats. 1937, Ch. 90.)

401. If a bond or photograph of an employee or applicant is required by any employer, the cost thereof shall be paid by the employer.

(Enacted by Stats. 1937, Ch. 90.)

402. No employer shall demand, exact, or accept any cash bond from any employee or applicant unless:

(a) The employee or applicant is entrusted with property of an equivalent value, or

(b) The employer advances regularly to the employee goods, wares, or merchandise to be delivered or sold by the employee, and for which the employer is reimbursed by the employee at regular periodic intervals, and the employer limits the cash bond to an amount sufficient to cover the value of the goods, wares, or merchandise so advanced during the period prior to the payment therefor.

(Enacted by Stats. 1937, Ch. 90.)

403. If cash is received as a bond it shall be deposited in a savings account in a bank authorized to do business in this State, and may be withdrawn only upon the joint signatures of the employer and the employee or applicant.

Cash put up as a bond shall be accompanied by an agreement in writing made by the employer and employee or applicant, setting forth the conditions under which the bond is given.

(Enacted by Stats. 1937, Ch. 90.)

404. Any money put up as a bond under Sections 401, 402 and 403:

(a) Is not subject to enforcement of a money judgment except in an action between the employer and the employee or applicant, or their successors or assigns.

(b) Shall be returned to the employee or applicant together with accrued interest thereon, immediately upon the return of the money or property entrusted to the employee or applicant and upon the fulfillment of the agreement, subject only to the deduction necessary to balance accounts between the employer and employee or applicant.

(Amended by Stats. 1982, Ch. 497, Sec. 133. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

405. Any property put up by any employee or applicant as a bond shall not be used for any purpose other than liquidating accounts between the employer and employee or for return to the employee or applicant and shall be held in trust for this purpose and not mingled with the property of the employer. No contract between the employer and employee or applicant shall abrogate the provisions of this section. Any employer or prospective employer, or agent or officer thereof, who misappropriates any such property, mingles it with his own, or uses it for any other purpose than that herein set forth is guilty of theft and shall be punished in accordance with the provisions of the Penal Code relating to theft.

(Enacted by Stats. 1937, Ch. 90.)

406. Any property put up by an employee, or applicant as a part of the contract of employment, directly or indirectly, shall be deemed to be put up as a bond and is subject to the provisions of this article whether the property is put up on a note or as a loan or an investment and regardless of the wording of the agreement under which it is put up.

(Enacted by Stats. 1937, Ch. 90.)

407. Investments and the sale of stock or an interest in a business in connection with the securing of a position are illegal as against the public policy of the State and shall not be advertised or held out in any way as a part of the consideration for any employment.

(Enacted by Stats. 1937, Ch. 90.)

408. Any person or agent or officer thereof, who violates any provision of this article, except the provisions of Section 405, is guilty of a misdemeanor, punishable by a fine of not less than fifty dollars ($50) and not exceeding one thousand dollars ($1,000), or imprisonment for not exceeding six months, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 191. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

409. All fines imposed and collected under this article shall be paid into the State treasury and credited to the general fund.

(Enacted by Stats. 1937, Ch. 90.)

410. The Labor Commissioner shall enforce this article.

(Enacted by Stats. 1937, Ch. 90.)

Article 3. Contracts and Applications for Employment

(Article 3 enacted by Stats. 1937, Ch. 90.)

430. As used in this article "applicant" means an applicant for employment.

(Enacted by Stats. 1937, Ch. 90.)

432. If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.

(Amended by Stats. 1969, Ch. 714.)

432.2. (a) No employer shall demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. The prohibition of this section does not apply to the federal government or any agency thereof or the state government or any agency or local subdivision thereof, including, but not limited to, counties, cities and counties, cities, districts, authorities, and agencies.

(b) No employer shall request any person to take such a test, or administer such a test, without first advising the person in writing at the time the test is to be administered of the rights guaranteed by this section.

(Amended by Stats. 1981, Ch. 316, Sec. 1.)

432.5. No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

(Added by Stats. 1963, Ch. 559.)

432.7. (a) (1) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(2) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law.

(3) For purposes of this section, "conviction" does not include, and shall not be construed to include, any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court law.

(b) Nothing in this section shall prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(c) In any case where a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(d) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.

(f) (1) Except as provided in paragraph (2), nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(A) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

(B) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(2) (A) An employer specified in paragraph (1) shall not inquire into information concerning or related to an applicant's arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law, unless the information concerns an adjudication by the juvenile court in which the applicant has been found by the court to have committed a felony or misdemeanor offense specified in paragraph (1) that occurred within five years preceding the application for employment.

(B) Notwithstanding any other provision of this subdivision, an employer specified in paragraph (1) shall not inquire into information concerning or related to an applicant's juvenile offense history that has been sealed by the juvenile court.

(3) An employer seeking disclosure of offense history under paragraph (2) shall provide the applicant with a list describing the specific offenses under Section 11590 of the Health and Safety Code or Section 290 of the Penal Code for which disclosure is sought.

(g) (1) No peace officer or employee of a law enforcement agency with access to criminal or juvenile offender record information maintained by a local law enforcement criminal

or juvenile justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(2) No other person authorized by law to receive criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who is not authorized by law to receive or possess criminal or juvenile justice records information maintained by a local law enforcement criminal or juvenile justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall knowingly receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal or juvenile offender records maintained by a local law enforcement criminal or juvenile justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal or juvenile justice agency who is required by that employment to receive, analyze, or process criminal or juvenile offender record information.

(i) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, Sections 626, 626.5, 654, or 725 of, or Article 20.5 (commencing with Section 790) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, or any other program expressly authorized and described by statute as a diversion program.

(k) (1) Subdivision (a) shall not apply to any city, city and county, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

(2) For purposes of this subdivision the following terms have the following meanings:

(A) "Screening" means a written request for criminal or juvenile history information made to a local law enforcement agency.

(B) "Prospective concessionaire" means any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency's consent to, or approval of, the acquisition by that individual or entity of any beneficial ownership interest in any public agency's concession, lease, or other property right whether directly or indirectly held. However, "prospective concessionaire" does not include any of the following:

(i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender's business and not made for the purpose of acquisition.

(ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender's security.

(C) "Affiliate" means any individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

(D) "Associate" means any individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.

(E) "Control" means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.

(l) (1) Nothing in subdivision (a) shall prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.

(2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.

(3) Any prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.

(4) (A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

(m) Paragraph (1) of subdivision (a) does not prohibit an employer from asking an applicant about a criminal conviction of, seeking from any source information regarding a criminal conviction of, utilizing as a factor in determining any condition of employment of, or entry into a pretrial diversion or similar program by, the applicant if, pursuant to Section 1829 of Title 12 of the United States Code or any other state or federal law, any of the following apply:

(1) The employer is required by law to obtain information regarding a conviction of an applicant.

(2) The applicant would be required to possess or use a firearm in the course of his or her employment.

(3) An individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

(4) The employer is prohibited by law from hiring an applicant who has been convicted of a crime.

(Amended by Stats. 2016, Ch. 686, Sec. 1. Effective January 1, 2017.)

432.8. The limitations on employers and the penalties provided for in Section 432.7 shall apply to a conviction for violation of subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of Section 11360 of the Health and Safety Code, or Section 11364, 11365, or 11550 of the Health and Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, two years from the date of such a conviction.

(Added by Stats. 1976, Ch. 952.)

432.9. (a) A state or local agency shall not ask an applicant for employment to disclose, orally or in writing, information concerning the conviction history of the applicant, including any inquiry about conviction history on any employment application, until the agency has determined the applicant meets the minimum employment qualifications, as stated in any notice issued for the position.

(b) This section shall not apply to a position for which a state or local agency is otherwise required by law to conduct a conviction history background check, to any position within a criminal justice agency, as that term is defined in Section 13101 of the Penal Code, or to any individual working on a temporary or permanent basis for a criminal justice agency on a contract basis or on loan from another governmental entity.

(c) This section shall not be construed to prevent a state or local agency from conducting a conviction history background check after complying with all of the provisions of subdivision (a).

(d) As used in this section, "state agency" means any state office, officer, department, division, bureau, board, commission, or agency.

(e) As used in this section, "local agency" means any county, city, city and county, including a charter city or county, or any special district.

(f) Section 433 does not apply to this section.

(g) This section shall become operative on July 1, 2014.

(Added by Stats. 2013, Ch. 699, Sec. 2. Effective January 1, 2014. Section operative July 1, 2014, by its own provisions.)

433. Any person violating this article is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

434. The provisions of this article shall not apply to applications for employment filed with common carriers by railroad subject to the act of Congress known as the Railway Labor Act.

(Enacted by Stats. 1937, Ch. 90.)

435. (a) No employer may cause an audio or video recording to be made of an employee in a restroom, locker room, or room designated by an employer for changing clothes, unless authorized by court order.

(b) No recording made in violation of this section may be used by an employer for any purpose. This section applies to a private or public employer, except the federal government.

(c) A violation of this section constitutes an infraction.

(Added by Stats. 1998, Ch. 515, Sec. 1. Effective January 1, 1999.)

Article 4. Purchases

(Article 4 enacted by Stats. 1937, Ch. 90.)

450. (a) No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value.

(b) For purposes of this section, to compel or coerce the purchase of any thing of value includes, but is not limited to, instances where an employer requires the payment of a fee or consideration of any type from an applicant for employment for any of the following purposes:

(1) For an individual to apply for employment orally or in writing.

(2) For an individual to receive, obtain, complete, or submit an application for employment.

(3) For an employer to provide, accept, or process an application for employment.

(Amended by Stats. 1998, Ch. 442, Sec. 1. Effective January 1, 1999.)

451. Any person, or agent or officer thereof, who violates this article is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

452. Nothing in this article shall prohibit an employer from prescribing the weight, color, quality, texture, style, form and make of uniforms required to be worn by his employees.

(Enacted by Stats. 1937, Ch. 90.)

Part 2. Working Hours

(Part 2 enacted by Stats. 1937, Ch. 90.)

Chapter 1. General

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

500. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Workday" and "day" mean any consecutive 24-hour period commencing at the same time each calendar day.

(b) "Workweek" and "week" mean any seven consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.

(c) "Alternative workweek schedule" means any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.

(Added by Stats. 1999, Ch. 134, Sec. 3. Effective January 1, 2000.)

510. (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in

order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

(Amended by Stats. 1999, Ch. 134, Sec. 4. Effective January 1, 2000.)

511. (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding subdivision (c) of Section 500, the menu of work schedule options may include a regular schedule of eight-hour days that are compensated in accordance with subdivision (a) of Section 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

(b) An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(c) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal, or nullification of an alternative workweek schedule.

(d) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule hours established as the result of that election. An employer shall be permitted to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election. An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(e) The results of any election conducted pursuant to this section shall be reported by an employer to the Division of Labor Standards Enforcement within 30 days after the results are final.

(f) Any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees pursuant to this section. Any alternative workweek schedule that was adopted pursuant to Wage Order Number 1, 4, 5, 7, or 9 of the Industrial Welfare Commission is null and void, except for an alternative workweek providing for a regular schedule of no more than 10 hours' work in a workday that was adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998. This subdivision does not apply to exemptions authorized pursuant to Section 515.

(g) Notwithstanding subdivision (f), an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Order Numbers 4 and 5 in effect prior to 1998 that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation shall be valid until July 1, 2000. An employer in the health care industry shall make a reasonable effort to accommodate any employee in the health care industry who is unable to work the alternative schedule established as the result of a valid election held in accordance with provisions of Wage Order Number 4 or 5 that were in effect prior to 1998.

(h) Notwithstanding subdivision (f), if an employee is voluntarily working an alternative workweek schedule providing for a regular work schedule of not more than 10 hours' work in a workday as of July 1, 1999, an employee may continue to work that alternative workweek schedule without the entitlement of the payment of daily overtime compensation for the hours provided in that schedule if the employer approves a written request of the employee to work that schedule.

(i) For purposes of this section, "work unit" includes a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision thereof. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this section is met.

(Amended by Stats. 2012, Ch. 46, Sec. 88. Effective June 27, 2012.)

512. (a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may

be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

(c) Subdivision (a) does not apply to an employee in the wholesale baking industry who is subject to an Industrial Welfare Commission wage order and who is covered by a valid collective bargaining agreement that provides for a 35-hour workweek consisting of five 7-hour days, payment of one and one-half times the regular rate of pay for time worked in excess of seven hours per day, and a rest period of not less than 10 minutes every two hours.

(d) If an employee in the motion picture industry or the broadcasting industry, as those industries are defined in Industrial Welfare Commission Wage Order Numbers 11 and 12, is covered by a valid collective bargaining agreement that provides for meal periods and includes a monetary remedy if the employee does not receive a meal period required by the agreement, then the terms, conditions, and remedies of the agreement pertaining to meal periods apply in lieu of the applicable provisions pertaining to meal periods of subdivision (a) of this section, Section 226.7, and Industrial Welfare Commission Wage Order Numbers 11 and 12.

(e) Subdivisions (a) and (b) do not apply to an employee specified in subdivision (f) if both of the following conditions are satisfied:

(1) The employee is covered by a valid collective bargaining agreement.

(2) The valid collective bargaining agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

(f) Subdivision (e) applies to each of the following employees:

(1) An employee employed in a construction occupation.

(2) An employee employed as a commercial driver.

(3) An employee employed in the security services industry as a security officer who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, and who is employed by a private patrol operator registered pursuant to that chapter.

(4) An employee employed by an electrical corporation, a gas corporation, or a local publicly owned electric utility.

(g) The following definitions apply for the purposes of this section:

(1) "Commercial driver" means an employee who operates a vehicle described in Section 260 or 462 of, or subdivision (b) of Section 15210 of, the Vehicle Code.

(2) "Construction occupation" means all job classifications associated with construction by Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair, and any other similar or related occupation or trade.

(3) "Electrical corporation" has the same meaning as provided in Section 218 of the Public Utilities Code.

(4) "Gas corporation" has the same meaning as provided in Section 222 of the Public Utilities Code.

(5) "Local publicly owned electric utility" has the same meaning as provided in Section 224.3 of the Public Utilities Code.

(Amended by Stats. 2010, Ch. 662, Sec. 1. Effective January 1, 2011.)

512.5. (a) Notwithstanding any provision of this chapter, if the Industrial Welfare Commission adopts or amends an order that applies to an employee of a public agency who operates a commercial motor vehicle, it may exempt that employee from the application of the provisions of that order which relate to meal periods or rest periods, consistent with the health and welfare of that employee, if he or she is covered by a valid collective bargaining agreement.

(b) "Commercial motor vehicle" for the purposes of this section has the same meaning as provided in subdivision (b) of Section 15210 of the Vehicle Code.

(c) "Public agency" for the purposes of this section means the state and any political subdivision of the state, including any city, county, city and county, or special district.

(Added by Stats. 2003, Ch. 327, Sec. 1. Effective January 1, 2004.)

513. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted towards computing the total number of hours worked in a day for purposes of the overtime requirements specified in Section 510 or 511, except for hours in excess of 11 hours of work in one day or 40 hours in one workweek. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this section. An employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same week pursuant to this section.

(Added by Stats. 1999, Ch. 134, Sec. 7. Effective January 1, 2000.)

514. Sections 510 and 511 do not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(Amended by Stats. 2001, Ch. 148, Sec. 1. Effective January 1, 2002.)

515. (a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. The commission shall conduct a review of the duties that meet the test of the exemption. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to duties that meet the test of the exemption without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(b) Except as otherwise provided in this section and in subdivision (g) of Section 511, nothing in this section requires the commission to alter an exemption from provisions regulating hours of work that was contained in a valid wage order in effect

in 1997. Except as otherwise provided in this division, the commission may review, retain, or eliminate an exemption from provisions regulating hours of work that was contained in a valid wage order in effect in 1997.

(c) For the purposes of subdivision (a), "full-time employment" means employment in which an employee is employed for 40 hours per week.

(d) (1) For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be1/40th of the employee's weekly salary.

(2) Payment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee's regular, nonovertime hours, notwithstanding any private agreement to the contrary.

(e) For the purposes of this section, "primarily" means more than one-half of the employee's worktime.

(f) (1) In addition to the requirements of subdivision (a), a registered nurse employed to engage in the practice of nursing shall not be exempted from coverage under the orders of the Industrial Welfare Commission, unless he or she individually meets the criteria for exemptions established for executive or administrative employees.

(2) This subdivision does not apply to any of the following:

(A) A certified nurse midwife who is primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(B) A certified nurse anesthetist who is primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(C) A certified nurse practitioner who is primarily engaged in performing duties for which certification is required pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(D) Nothing in this paragraph shall exempt the occupations set forth in subparagraphs (A), (B), and (C) from meeting the requirements of subdivision (a).

(Amended by Stats. 2012, Ch. 820, Sec. 2. Effective January 1, 2013.)

515.5. (a) Except as provided in subdivision (b), an employee in the computer software field shall be exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:

(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(2) The employee is primarily engaged in duties that consist of one or more of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

(C) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(3) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering. A job title shall not be determinative of the applicability of this exemption.

(4) The employee's hourly rate of pay is not less than thirty-six dollars ($36.00) or, if the employee is paid on a salaried basis, the employee earns an annual salary of not less than seventy-five thousand dollars ($75,000) for full-time employment, which is paid at least once a month and in a monthly amount of not less than six thousand two hundred fifty dollars ($6,250). The department shall adjust both the hourly pay rate and the salary level described in this paragraph on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:

(1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(2) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(3) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(4) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not engaged in computer systems analysis, programming, or any other similarly skilled computer-related occupation.

(5) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(6) The employee is engaged in any of the activities set forth in subdivision (a) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(Amended by Stats. 2012, Ch. 46, Sec. 89. Effective June 27, 2012.)

515.6. (a) Section 510 shall not apply to any employee who is a licensed physician or surgeon, who is primarily engaged in duties that require licensure pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and whose hourly rate of pay is equal to or greater than fifty-five dollars ($55.00). The department shall adjust this threshold rate of pay each October 1, to be effective the following January 1, by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) shall not apply to an employee employed in a medical internship or resident program or to a physician employee covered by a valid collective bargaining agreement pursuant to Section 514.

(Amended by Stats. 2012, Ch. 46, Sec. 90. Effective June 27, 2012.)

515.8. (a) Section 510 does not apply to an individual employed as a teacher at a private elementary or secondary

academic institution in which pupils are enrolled in kindergarten or any of grades 1 to 12, inclusive.

(b) For purposes of this section, "employed as a teacher" means that the employee meets all of the following requirements:

(1) The employee is primarily engaged in the duty of imparting knowledge to pupils by teaching, instructing, or lecturing.

(2) The employee customarily and regularly exercises discretion and independent judgment in performing the duties of a teacher.

(3) On and after July 1, 2017, the employee earns the greater of the following:

(A) No less than 100 percent of the lowest salary offered by any school district to a person who is in a position that requires the person to have a valid California teaching credential and is not employed in that position pursuant to an emergency permit, intern permit, or waiver.

(B) The equivalent of no less than 70 percent of the lowest schedule salary offered by the school district or county in which the private elementary or secondary academic institution is located to a person who is in a position that requires the person to have a valid California teaching credential and is not employed in that position pursuant to an emergency permit, intern permit, or waiver.

(4) The employee has attained at least one of the following levels of professional advancement:

(A) A baccalaureate or higher degree from an accredited institution of higher education.

(B) Current compliance with the requirements established by the California Commission on Teacher Credentialing, or the equivalent certification authority in another state, for obtaining a preliminary or alternative teaching credential.

(c) This section does not apply to any tutor, teaching assistant, instructional aide, student teacher, day care provider, vocational instructor, or other similar employee.

(d) The exemption established in subdivision (a) is in addition to, and does not limit or supersede, any exemption from overtime established by a Wage Order of the Industrial Welfare Commission for persons employed in a professional capacity, and does not affect any exemption from overtime established by that commission pursuant to subdivision (a) of Section 515 for persons employed in an executive or administrative capacity.

(Amended by Stats. 2016, Ch. 314, Sec. 1. Effective January 1, 2017.)

516. (a) Except as provided in Section 512, the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

(b) Notwithstanding subdivision (a), or any other law, including Section 512, the health care employee meal period waiver provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable. This subdivision is declarative of, and clarifies, existing law.

(Amended by Stats. 2015, Ch. 506, Sec. 2. Effective October 5, 2015.)

517. (a) The Industrial Welfare Commission shall, at a public hearing to be concluded by July 1, 2000, adopt wage, hours, and working conditions orders consistent with this chapter without convening wage boards, which orders shall be final and conclusive for all purposes. These orders shall include regulations necessary to provide assurances of fairness regarding the conduct of employee workweek elections, procedures for employees to petition for and obtain elections to repeal alternative workweek schedules, procedures for implementation of those schedules, conditions under which an adopted alternative workweek schedule can be repealed by the employer, employee disclosures, designations of work, and processing of workweek election petitions pursuant to Parts 2 and 4 of this division and in any wage order of the commission and such other regulations as may be needed to fulfill the duties of the commission pursuant to this part.

(b) Prior to July 1, 2000, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions in the ski industry, commercial fishing industry, and health care industry, and for stable employees in the horseracing industry. Notwithstanding subdivision (a) and Sections 510 and 511, and consistent with its duty to protect the health, safety, and welfare of workers pursuant to Section 1173, the commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to the industries herein, without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(c) Notwithstanding subdivision (a) of Section 515, prior to July 1, 2000, the commission shall conduct a review of wages, hours, and working conditions of licensed pharmacists. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to licensed pharmacists without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(d) Notwithstanding sections 1171 and subdivision (a) of Section 515, the Industrial Welfare Commission shall conduct a review of wages, hours, and working conditions of outside salespersons. The commission may, based upon this review, convene a public hearing to adopt or modify regulations at that hearing pertaining to outside salespersons without convening wage boards. Any hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.

(e) Nothing in this section is intended to restrict the Industrial Welfare Commission in its continuing duties pursuant to Section 1173.

(f) No action taken by the Industrial Welfare Commission pursuant to this section is subject to the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(g) All wage orders and other regulations issued or adopted pursuant to this section shall be published in accordance with Section 1182.1.

(Added by Stats. 1999, Ch. 134, Sec. 11. Effective January 1, 2000.)

550. As used in this chapter "day's rest" applies to all situations whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

(Enacted by Stats. 1937, Ch. 90.)

551. Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.

(Enacted by Stats. 1937, Ch. 90.)

552. No employer of labor shall cause his employees to work more than six days in seven.

(Enacted by Stats. 1937, Ch. 90.)

553. Any person who violates this chapter is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

554. (a) Sections 551 and 552 do not apply to cases of emergency or to work performed in the protection of life or property from loss

or destruction, or to any common carrier engaged in or connected with the movement of trains. Nothing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, if in each calendar month the employee receives days of rest equivalent to one day's rest in seven. The requirement respecting the equivalent of one day's rest in seven shall apply, notwithstanding the other provisions of this chapter relating to collective bargaining agreements, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement respecting the hours of work of the employees, unless the agreement expressly provides otherwise.

(b) In addition to the exceptions specified in subdivision (a), the Chief of the Division of Labor Standards Enforcement may, when in his or her judgment hardship will result, exempt any employer or employees from the provisions of Sections 551 and 552.

(Amended by Stats. 2016, Ch. 313, Sec. 1. Effective January 1, 2017.)

555. Sections 550, 551, 552 and 554 of this chapter are applicable to cities which are cities and counties and to the officers and employees thereof.

(Amended by Stats. 1955, Ch. 624.)

556. Sections 551 and 552 shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.

(Amended by Stats. 1999, Ch. 134, Sec. 13. Effective January 1, 2000.)

558. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, any provision regulating hours and days of work in any order of the Industrial Welfare Commission, or any applicable local overtime law, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) In a jurisdiction where a local entity has the legal authority to issue a citation against an employer for a violation of any applicable local overtime law, the Labor Commissioner, pursuant to a request from the local entity, may issue a citation against an employer for a violation of any applicable local overtime law if the local entity has not cited the employer for the same violation. If the Labor Commissioner issues a citation, the local entity shall not cite the employer for the same violation.

(d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

(e) This section does not change the applicability of local overtime wage laws to any entity.

(Amended by Stats. 2015, Ch. 783, Sec. 1. Effective January 1, 2016.)

558.1. (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Added by Stats. 2015, Ch. 803, Sec. 10. Effective January 1, 2016.)

Chapter 2. Railroads

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

600. As used in this chapter, unless the context otherwise indicates:

(a) "Railroad" means any steam railroad, electric railroad, or railway, operated in whole or in part in this State.

(b) "Railroad corporation" means a corporation or receiver operating a railroad.

(c) "Trainman" means a conductor, motorman, engineer, fireman, brakeman, train dispatcher, or telegraph operator, employed by or working in connection with a railroad.

(Enacted by Stats. 1937, Ch. 90.)

601. No railroad corporation or any officer, agent or representative of such corporation shall require or knowingly permit any trainman to be on duty for a longer period than 12 consecutive hours.

(Amended by Stats. 1982, Ch. 896, Sec. 1.)

602. Whenever any trainman has been continuously on duty for 12 hours he shall be relieved and not required or permitted again to go on duty or perform any work for the railroad corporation until he has had at least 10 consecutive hours off duty.

(Amended by Stats. 1982, Ch. 896, Sec. 2.)

603. No trainman who has been on duty 12 hours in the aggregate in any 24-hour period shall be required or permitted to continue or again go on duty without having had at least 8 consecutive hours off duty.

(Amended by Stats. 1982, Ch. 896, Sec. 3.)

604. No person who by the use of the telegraph or telephone, dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements shall be required or permitted to be on duty for a longer period than nine hours in any twenty-four hours, in towers, offices, places and stations continuously operated night and day, nor for a longer period than thirteen hours in towers, offices, places and stations operated only during the daytime. In case of emergency, however, the persons referred to in this section may be permitted to be on duty for four additional hours in a twenty-four hour period. Such additional duty shall not be required or permitted on more than three days in any week.

(Enacted by Stats. 1937, Ch. 90.)

605. Any railroad corporation that violates any of the provisions of this chapter is liable to the state in a penalty of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each offense. The penalty shall be

recovered and suit therefor shall be brought in the name of the state in a court of competent jurisdiction in any county into or through which said railroad may pass. The suit may be brought either by the Attorney General of the state or under his or her direction by the district attorney of any county in the state into or through which said railroad passes.

(Amended by Stats. 2003, Ch. 329, Sec. 4. Effective January 1, 2004.)

606. Any officer, agent or representative of any railroad corporation who violates any of the provisions of this chapter is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense, or confinement in the county jail for not less than 10 nor more than 60 days, or both. Such person so offending may be prosecuted under this section, either in the county where he is at the time of commission of the offense, or in any county where such employee has been permitted or required to work in violation of this chapter.

(Amended by Stats. 1983, Ch. 1092, Sec. 193. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

607. This chapter shall not apply in any case of casualty, unavoidable accident, or act of God; nor where the delay was the result of a cause not known to, and which could not have been foreseen by, the railroad corporation, or its officer or agent in charge of a trainman at the time the trainman left a terminal. This chapter shall not apply to the crews of wrecking, or relief trains.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 3. Smelters and Underground Workings

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

750. (a) Except as otherwise provided in this chapter, no employee may be employed for a period that exceeds eight hours within any 24-hour period and the hours of employment of any workday shall be consecutive, excluding intermissions for meals, for all persons who are employed or engaged in work in any of the following:

(1) Underground mines.

(2) Smelters and plants for the reduction or refining of ores or metals.

(b) No provision of this chapter applies to quarries or other operations for the extraction of nonmetallic minerals, including, but not limited to, sand, gravel, and rock.

(c) No provision of this chapter applies to an employee who is employed in an executive, administrative, or professional capacity, or employed as an outside salesperson.

(Amended by Stats. 1995, Ch. 903, Sec. 1. Effective January 1, 1996.)

750.5. Notwithstanding Section 750, an employee may be employed for a period that exceeds eight hours within a 24-hour period, under the circumstances specified in subdivision (a), (b), or (c), as follows:

(a) If the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of the employees.

(b) If a two-thirds majority of the affected employees of that employer whose hours are regulated by this chapter have voted in an election to adopt a policy that specifies periods of work that may exceed eight hours in a 24-hour period, and the employer adopts that policy, subject to all of the following conditions:

(1) The agreement adopted with respect to that policy reflects the results of the election.

(2) The election is conducted, at the expense of the employer, with the use of secret ballots, during regular working hours. Upon the written request of an employee to his or her employer, or to the Labor Commissioner, made no later than 10 days prior to the date set for the election, the employer shall cause the election to be conducted by a neutral third party with experience in conducting employee elections. If such a written request is made to the commissioner pursuant to this paragraph, the commissioner shall not disclose the identity of the employee and shall notify the employer, no later than five days prior to the date set for the election, that the election is required to be conducted by a neutral third party. Such an election may be conducted by utilizing mail ballots.

(3) All employees of that employer whose hours are regulated by this chapter and who have become employed by that employer within 24 hours of the time the election is commenced are eligible to vote in the election.

(4) The policy shall be effective for the period specified therein, not exceeding 12 months.

(5) No later than 14 days prior to the date set for an election, the employer shall do all of the following:

(A) Provide a written notice to the affected employees that describes the effects the proposed work schedule would have on the employees' wages, hours, and benefits, and the employees' rights under this chapter, including the right to request that the election be conducted by a neutral third party pursuant to this section, and to file a complaint against the employer pursuant to this chapter.

(B) Provide a written statement to the affected employees, prepared by a neutral source knowledgeable in health and safety matters and unaffiliated with the employer, that explains any health and safety considerations of extended work shifts.

(C) Hold informational meetings for the affected employees on each shift during the regular working hours of the affected employees. At each of these meetings, the employer shall explain the effect of the proposed policy on the hours and compensation of the employees. Written notice of the time, date, place, and purpose of these informational meetings shall be conspicuously posted in at least three locations throughout the mine site for at least seven consecutive days before the date of the meetings. Written notice of the time, date, place, and purpose of the election shall be posted in the same manner and for the same period. Failure to comply with the procedural requirements of this paragraph shall void the results of the election for purposes of this section.

(6) Any employer that establishes a regular scheduled workday pursuant to this subdivision shall make a reasonable attempt to place an employee, who was eligible to participate in the election that authorized an extended workday schedule and who is unable or unwilling to work the extended schedule, in an alternative work assignment that the employee is capable of performing. An employer shall not be required to offer an alternative work assignment to an employee if an alternative work assignment that the employee is capable of performing is not available or if the employee commenced his or her employment after the election.

(c) On the day a scheduled change of shift takes effect.

(Amended by Stats. 1995, Ch. 903, Sec. 2. Effective January 1, 1996.)

751. In the case of an emergency where life or property is in imminent danger, the work shift may be extended during the continuance of the emergency.

(Amended by Stats. 1995, Ch. 903, Sec. 3. Effective January 1, 1996.)

751.5. Where emergency repairs to, or maintenance or replacement of, machinery or equipment are necessary for the

continuous operation thereof, the hours that an employee may be engaged in performing the emergency repairs, maintenance, or replacement, may, during the pendency of the emergency, exceed the period specified in Section 750.

(Amended by Stats. 1995, Ch. 903, Sec. 4. Effective January 1, 1996.)

751.8. (a) Notwithstanding Section 750, the period of employment may exceed eight hours in any 24-hour period if the employee is paid at the overtime rate of pay for hours worked in excess of that employee's regularly scheduled shift and for hours worked in excess of 40 hours in a seven-day period. Unless regularly scheduled shifts are established pursuant to Section 750.5, overtime rates of pay shall be paid for all hours worked in excess of those hours prescribed by Section 750 as the maximum allowable hours of employment.

(b) All work performed in any workday in excess of the scheduled hours established by an agreement pursuant to subdivision (b) of Section 750.5 up to and including 12 hours, or in excess of 40 hours in a workweek, shall be compensated at one and one-half times the employee's regular rate of compensation. All work performed in any workday in excess of 12 hours shall be compensated at double the employee's regular rate of compensation. No hours that are compensated at either one and one-half times, or double, the regular rate of compensation shall be included in determining the number of hours an employee has worked in a workweek for purposes of computing premium compensation.

(Added by Stats. 1995, Ch. 903, Sec. 5. Effective January 1, 1996.)

752. (a) Any affected employee, or his or her representative, may file a complaint with the Labor Commissioner concerning the conduct of an election pursuant to subdivision (b) of Section 750.5 within 14 days following notice of the outcome of the election. The Labor Commissioner shall investigate the complaint and shall invalidate the election if the commissioner finds that misconduct has occurred that could have affected the outcome of the election. If the election is invalidated, the commissioner shall prohibit the employer from conducting a similar election for a period of 12 months.

(b) Any employer, or representative of an employer, that violates Section 750 or 751.8 shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each affected employee for each violation for each pay period.

(2) For each subsequent violation for the same offense, two hundred dollars ($200) for each violation for each affected employee for each pay period, regardless of whether the initial violation is intentionally committed.

(c) If the Labor Commissioner determines that an employer has failed to comply with paragraph (6) of subdivision (b) of Section 750.5, the Labor Commissioner shall order the employer to comply. The order, in appropriate cases, shall include provisions for reinstatement and backpay.

(d) An employer shall not retaliate in any way against an employee for exercising any right pursuant to this chapter.

(Amended by Stats. 2003, Ch. 329, Sec. 5. Effective January 1, 2004.)

752.5. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 1995, Ch. 903, Sec. 8. Effective January 1, 1996.)

Chapter 4. Lumber Industries

(Chapter 4 enacted by Stats. 1937, Ch. 90.)

800. Every person operating a sawmill, shakemill, shinglemill, logging camp, planing mill, veneer mill, plywood plant or any other type of plant or mill which processes or manufactures any lumber, lumber products or allied wood products, in this State shall allow his employees a period of not less than one-half hour for the midday meal, between the third and fifth hours of each day's shift after the start thereof.

(Amended by Stats. 1959, Ch. 717.)

801. Any person, or agent or officer thereof who violates any provision of this chapter is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than four hundred dollars ($400).

(Amended by Stats. 1983, Ch. 1092, Sec. 195. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

Chapter 5. Pharmacies

(Chapter 5 enacted by Stats, 1937, Ch. 90.)

850. No person employed to sell at retail drugs and medicines or to compound physicians' prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days in any two consecutive weeks, except that any registered pharmacist may be so employed and may perform such work for the full period of time permitted by this section.

(Amended by Stats. 1955, Ch. 435.)

851. No person employing another person to sell at retail drugs and medicines or to compound physicians' prescriptions shall require or permit such employee to perform any work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days in any two consecutive weeks, except that any registered pharmacist may be so employed and may perform such work for the full period of time permitted by this section.

(Amended by Stats. 1955, Ch. 436.)

851.5. Except on Sundays and holidays, and except for a period of time for meals, not to exceed one hour in length, the hours of work permitted per day by this chapter shall be consecutive. This section does not apply to hospitals employing only one person to compound physicians' prescriptions.

(Added by Stats. 1939, Ch. 567.)

852. The employer shall apportion the periods of rest to be taken by an employee so that the employee will have one complete day of rest during each week.

(Amended by Stats. 1939, Ch. 567.)

853. Any person who violates any provision of this chapter is guilty of a misdemeanor punishable by a fine of not less than forty dollars ($40) nor more than one hundred dollars ($100) or by imprisonment for not exceeding 60 days, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 196. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

854. The provisions of this chapter shall not apply in any case of emergency. The word "emergency" shall be construed as being accident, death, sickness or epidemic.

(Enacted by Stats. 1937, Ch. 90.)

855. The provisions of this chapter are enacted as a measure for the protection of the public health.

(Enacted by Stats. 1937, Ch. 90.)

856. The Labor Commissioner shall enforce this chapter.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 6. Agriculture

(Chapter 6 added by Stats. 2016, Ch. 313, Sec. 2.)

857. This chapter shall be known and may be cited as the Phase-In Overtime for Agricultural Workers Act of 2016.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

858. The Legislature finds and declares all of the following:

(a) Agricultural employees engage in back-breaking work every day.

(b) Few occupations in today's America are as physically demanding and exhausting as agricultural work.

(c) In 1938, the United States Congress enacted the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), which excluded agricultural workers from wage protections and overtime compensation requirements.

(d) It is the intent of the Legislature to enact the Phase-In Overtime for Agricultural Workers Act of 2016 to provide any person employed in an agricultural occupation in California, as defined in Order No. 14-2001 of the Industrial Welfare Commission (revised 07-2014) with an opportunity to earn overtime compensation under the same standards as millions of other Californians.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

859. For purposes of this chapter, "employed in an agricultural occupation" has the same meaning as in Order No.14-2001 of the Industrial Welfare Commission (revised 07-2014).

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

860. Notwithstanding any other provision of law, including Chapter 1 (commencing with Section 500):

(a) (1) Commencing January 1, 2019, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than nine and one-half hours in any one workday or work in excess of 55 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over nine and one-half hours in any workday or over 55 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2022.

(b) (1) Commencing January 1, 2020, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than nine hours in any one workday or work in excess of 50 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over nine hours in any workday or over 50 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2023.

(c) (1) Commencing January 1, 2021, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than eight and one-half hours in any one workday or work in excess of 45 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over eight and one-half hours in any workday or over 45 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2024.

(d) (1) Commencing January 1, 2022, except as provided in paragraph (2), any person employed in an agricultural occupation shall not be employed more than eight hours in any one workday or work in excess of 40 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over eight hours in any workday or over 40 hours in any workweek.

(2) This subdivision shall apply to an employer who employs 25 or fewer employees commencing January 1, 2025.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

861. Except as set forth in Section 860 and subdivision (a) of Section 862, all other provisions of Chapter 1 (commencing with Section 500) regarding compensation for overtime work shall apply to workers in an agricultural occupation commencing January 1, 2017.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

862. (a) Beginning January 1, 2022, except as provided in subdivision (c), and consistent with Section 510, any work performed by a person, employed in an agricultural occupation, in excess of 12 hours in one day shall be compensated at the rate of no less than twice the employee's regular rate of pay.

(b) Consistent with Section 861, notwithstanding subdivision (a) or Section 863, the other provisions of Section 510 shall be applicable to workers in an agricultural occupation commencing January 1, 2019.

(c) Subdivision (a) shall apply to an employer who employs 25 or fewer employees commencing January 1, 2025.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

863. (a) Notwithstanding Section 860 or 862, the Governor may temporarily suspend scheduled phase in of the overtime requirements set forth in Section 860, or subdivision (a) of Section 862 only if the Governor suspends scheduled minimum wage increases pursuant to clause (i) of subparagraph (A) of, and subparagraph (B) of, paragraph (3) of subdivision (d) of Section 1182.12.

(b) If the Governor makes a final determination to temporarily suspend scheduled phase in of the overtime requirements set forth in Section 860 or subdivision (a) of Section 862 for the following year, all implementation dates applicable to Section 860 and subdivision (a) of Section 862 that are suspended subsequent to the September 1 final determination date, consistent with clause (i) of subparagraph (A) of, and subparagraph (B) of, paragraph (3) of subdivision (d) of Section 1182.12, shall be postponed by an additional year, but the full implementation of the overtime requirements set forth in Section 860 or subdivision (a) of Section 862 shall in no event be later than January 1, 2022. The Governor's temporary suspension under this section shall be by proclamation.

(c) The Governor's authority to suspend the scheduled overtime requirements under this section shall end upon the phase in of the overtime requirements contained in subdivision (d) of Section 860, the phase in of the overtime requirements contained in subdivision (c) of Section 862, or January 1, 2025, whichever occurs first.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

864. The Department of Industrial Relations shall update Wage Order No. 14-2001 to be consistent with this chapter, except that any existing provision in Wage Order 14-2001 providing greater protections or benefits to agricultural employees shall continue in full force and effect, notwithstanding any provision of this chapter.

(Added by Stats. 2016, Ch. 313, Sec. 2. Effective January 1, 2017.)

Part 3. Privileges And Immunities

(Part 3 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Contracts Against Public Policy

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

920. As used in this chapter, unless the context otherwise indicates, "promise" includes promise, undertaking, contract, or agreement, whether written or oral, express or implied.

(Enacted by Stats. 1937, Ch. 90.)

921. Every promise made after August 21, 1933, between any employee or prospective employee and his employer, prospective employer or any other person is contrary to public policy if either party thereto promises any of the following:

(a) To join or to remain a member of a labor organization or to join or remain a member of an employer organization,

(b) Not to join or not to remain a member of a labor organization or of an employer organization,

(c) To withdraw from an employment relation in the event that he joins or remains a member of a labor organization or of an employer organization.

Such promise shall not afford any basis for the granting of legal or equitable relief by any court against a party to such promise, or against any other persons who advise, urge, or induce, without fraud or violence or threat thereof, either party thereto to act in disregard of such promise.

(Enacted by Stats. 1937, Ch. 90.)

922. Any person or agent or officer thereof who coerces or compels any person to enter into an agreement, written or verbal, not to join or become a member of any labor organization, as a condition of securing employment or continuing in the employment of any such person is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

923. In the interpretation and application of this chapter, the public policy of this State is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(Enacted by Stats. 1937, Ch. 90.)

925. (a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing his or her rights under this section reasonable attorney's fees.

(d) For purposes of this section, adjudication includes litigation and arbitration.

(e) This section shall not apply to a contract with an employee who is in fact individually represented by legal counsel in negotiating the terms of an agreement to designate either the venue or forum in which a controversy arising from the employment contract may be adjudicated or the choice of law to be applied.

(f) This section shall apply to a contract entered into, modified, or extended on or after January 1, 2017.

(Added by Stats. 2016, Ch. 632, Sec. 1. Effective January 1, 2017.)

Chapter 2. Solicitation of Employees by Misrepresentation

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

970. No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:

(a) The kind, character, or existence of such work;

(b) The length of time such work will last, or the compensation therefor;

(c) The sanitary or housing conditions relating to or surrounding the work;

(d) The existence or nonexistence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer and the persons then or last engaged in the performance of the labor for which the employee is sought.

(Enacted by Stats. 1937, Ch. 90.)

971. Any person, or agent or officer thereof, who violates Section 970 is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000) or imprisonment for not more than six months or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 197. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

972. In addition to such criminal penalty, any person, or agent or officer thereof who violates any provision of Section 970 is liable to the party aggrieved, in a civil action, for double damages resulting from such misrepresentations. Such civil action may be brought by an aggrieved person or his assigns or successors in interest, without first establishing any criminal liability.

(Enacted by Stats. 1937, Ch. 90.)

973. If any person advertises for, or seeks employees by means of newspapers, posters, letters, or otherwise, or solicits or communicates by letter or otherwise with persons to work for him or the person for whom he is acting, or to work at any shop, plant, or establishment while a strike, lockout, or other trade dispute is still in active progress at such shop, plant, or establishment, he shall plainly and explicitly mention in such advertisement

or oral or written solicitations or communications that a strike, lockout, or other labor disturbance exists.

The person inserting any such advertisement, solicitation, or communication in a newspaper, on a poster, or otherwise, shall insert in such advertisement, solicitation or communication his own name and, if he is representing another, the name of the person he is representing and at whose direction and under whose authority he is inserting the advertisement, solicitation or communication. The appearance of this name in connection with such advertisement, solicitation or communication is prima facie evidence as to the person responsible for the advertisement, solicitation or communication.

(Amended by Stats. 1947, Ch. 281.)

974. Any person, or agent or officer thereof, who violates Section 973 is guilty of a misdemeanor.

(Amended by Stats. 1943, Ch. 1024.)

976. No person shall publish or cause to be published any advertisement, solicitation or communication in any newspaper, poster or letter, offering employment as a salesman, broker or agent, whether as an employee or independent contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead any person as to compensation or commissions which may be earned; or (b) falsely represents the compensation or commissions which may be earned.

This section shall not be applicable to any publisher of a newspaper, magazine, or other publication, who publishes an advertisement, solicitation or communication in good faith, without knowledge of its false, deceptive or misleading character.

(Amended by Stats. 1970, Ch. 243.)

977. Any person, or agent or officer thereof, who violates Section 976 is guilty of a misdemeanor.

(Added by Stats. 1961, Ch. 1583.)

Chapter 2.5. Employer Use of Social Media

(Chapter 2.5 added by Stats. 2012, Ch. 618, Sec. 1.)

980. (a) As used in this chapter, "social media" means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(b) An employer shall not require or request an employee or applicant for employment to do any of the following:

(1) Disclose a username or password for the purpose of accessing personal social media.

(2) Access personal social media in the presence of the employer.

(3) Divulge any personal social media, except as provided in subdivision (c).

(c) Nothing in this section shall affect an employer's existing rights and obligations to request an employee to divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.

(d) Nothing in this section precludes an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.

(e) An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

(Amended by Stats. 2013, Ch. 76, Sec. 142. Effective January 1, 2014.)

Chapter 3. Class of Labor Employed; Labor Union Insignia

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

1010. As used in this chapter "label" includes label, imprint, trade-mark, tag, stamp, inscription, or other device.

(Enacted by Stats. 1937, Ch. 90.)

1011. A person engaged in the production, manufacture, or sale of any article of merchandise in this state, shall not, by any label placed or impressed upon such article, or upon its container, misrepresent or falsely state any of the following as to the production of such article:

(a) The kind, character, or nature of the labor employed.

(b) The extent of the labor employed.

(c) The number or kind of persons exclusively employed.

(d) That a particular or distinctive class or character of laborers was wholly and exclusively employed, when in fact another class, or character, or distinction of laborers was used or employed either jointly or in anywise supplementary to such exclusive class, character, or distinction of laborers.

Violation of any provision of this section is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment for not less than 20 nor more than 90 days, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 198. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1012. Any person engaged in the production, manufacture, or sale of any article of merchandise in this state, or any person engaged in the performance of any acts or services of a private, public, or quasi-public nature for profit, who willfully misrepresents or falsely states that members of trades unions, labor associations, or labor organizations were engaged or employed in the manufacture, production, or sale of such article or in the performance of such acts or services, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than 90 days, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 199. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1013. As used in this chapter "forge" means forge, reproduce, copy, imitate, or counterfeit.

(Enacted by Stats. 1937, Ch. 90.)

1014. Any trade union, labor association, or labor organization, organized and existing in this State, which has adopted and registered a label or trademark in accordance with the law of this State, has the exclusive right to the ownership, use, and control of such label or trademark.

(Enacted by Stats. 1937, Ch. 90.)

1015. Any person who, without having an unrevoked written authority from such trade union, labor association or labor organization, willfully forges or procures to be forged such label or trademark, with intent to sell or assist other persons to sell, any goods to which such forged label is affixed as having been made, manufactured, or produced in whole or in part by labor, laborers, or employees who are members of, or allied or associated with, such trade union, labor association, or labor organization, is guilty of a misdemeanor, punishable by a fine

not more than one thousand dollars ($1,000) or imprisonment for not more than 90 days, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 200. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1016. Any person who willfully uses or displays the genuine label, trademark, insignia, seal, device, or form of advertisement of any association or labor union, in any manner not authorized by such association or labor organization or not in conformity with the bylaws thereof, is guilty of a misdemeanor punishable by a fine not exceeding two hundred dollars ($200) or imprisonment for not more than three months, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 201. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1017. Any person who wilfully uses the card of any labor union to obtain aid, assistance, or employment, unless entitled to use such card under the rules and regulations of a labor union within this State is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1018. Any person who willfully wears the button of any labor union of this state, unless entitled to wear the button under the rules of such union, is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not more than 20 days or by a fine of not more than forty dollars ($40), or by both fine and imprisonment.

(Amended by Stats. 1983, Ch. 1092, Sec. 202. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

Chapter 3.1. Unfair Immigration-Related Practices

(Chapter 3.1 added by Stats. 2013, Ch. 732, Sec. 4.)

1019. (a) It is unlawful for an employer or any other person or entity to engage in, or to direct another person or entity to engage in, unfair immigration-related practices against any person for the purpose of, or with the intent of, retaliating against any person for exercising any right protected under this code or by any local ordinance applicable to employees. Exercising a right protected by this code or local ordinance includes the following:

(1) Filing a complaint or informing any person of an employer's or other party's alleged violation of this code or local ordinance, so long as the complaint or disclosure is made in good faith.

(2) Seeking information regarding whether an employer or other party is in compliance with this code or local ordinance.

(3) Informing a person of his or her potential rights and remedies under this code or local ordinance, and assisting him or her in asserting those rights.

(b) (1) As used in this chapter, "unfair immigration-related practice" means any of the following practices, when undertaken for the retaliatory purposes prohibited by subdivision (a):

(A) Requesting more or different documents than are required under Section 1324a(b) of Title 8 of the United States Code, or a refusal to honor documents tendered pursuant to that section that on their face reasonably appear to be genuine.

(B) Using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required under Section 1324a(b) of Title 8 of the United States Code, or not authorized under any memorandum of understanding governing the use of the federal E-Verify system.

(C) Threatening to file or the filing of a false police report, or a false report or complaint with any state or federal agency.

(D) Threatening to contact or contacting immigration authorities.

(2) "Unfair immigration-related practice" does not include conduct undertaken at the express and specific direction or request of the federal government.

(c) Engaging in an unfair immigration-related practice against a person within 90 days of the person's exercise of rights protected under this code or local ordinance applicable to employees shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights.

(d) (1) An employee or other person who is the subject of an unfair immigration-related practice prohibited by this section, or a representative of that employee or person, may bring a civil action for equitable relief and any applicable damages or penalties.

(2) Upon a finding by a court of applicable jurisdiction of a violation of this section, upon application by a party or on its own motion, a court may do the following:

(A) For a first violation, order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to 14 days. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order.

(B) For a second violation, order the appropriate government agencies to suspend all licenses that are held by the violating party for a period of up to 30 days. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall immediately suspend the licenses.

(C) For a third or subsequent violation, order the appropriate government agencies to suspend for a period of up to 90 days all licenses that are held by the violating party. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall immediately suspend the licenses.

(3) In determining whether a suspension of all licenses is appropriate under this subdivision, the court shall consider whether the employer knowingly committed an unfair immigration-related practice, the good faith efforts of the employer to resolve any alleged unfair immigration-related practice after receiving notice of the violations, as well as the harm other employees of the employer, or employees of other employers on a multiemployer job site, will suffer as a result of the suspension of all licenses.

(4) An employee or other person who is the subject of an unfair immigration-related practice prohibited by this section, and who prevails in an action authorized by this section, shall recover his or her reasonable attorney's fees and costs, including any expert witness costs.

(e) As used in this chapter:

(1) "License" means any agency permit, certificate, approval, registration, or charter that is required by law and that is issued by any agency for the purposes of operating a business in this state and that is specific to the business location or locations where the unfair immigration-related practice occurred. "License" does not include a professional license.

(2) "Violation" means each incident when an unfair immigration-related practice was committed, without reference to the number of employees involved in the incident.

(Amended by Stats. 2015, Ch. 303, Sec. 375. Effective January 1, 2016.)

1019.1. (a) It is unlawful for an employer, in the course of satisfying the requirements of Section 1324a(b) of Title 8 of the United States Code, to do any of the following:

(1) Request more or different documents than are required under Section 1324a(b) of Title 8 of the United States Code.

(2) Refuse to honor documents tendered that on their face reasonably appear to be genuine.

(3) Refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work.

(4) Attempt to reinvestigate or reverify an incumbent employee's authorization to work using an unfair immigration-related practice.

(b) (1) Any person who violates this section shall be subject to a penalty imposed by the Labor Commissioner and liability for equitable relief.

(2) An applicant for employment or an employee who is subject to an unlawful act that is prohibited by this section, or a representative of that applicant for employment or employee, may file a complaint with the Division of Labor Standards Enforcement pursuant to Section 98.7.

(3) The penalty recoverable by the applicant or employee, or by the Labor Commissioner, for a violation of this section shall not exceed ten thousand dollars ($10,000) per violation.

(Added by Stats. 2016, Ch. 782, Sec. 1. Effective January 1, 2017.)

Chapter 3.5. Contractors

(Chapter 3.5 added by Stats. 1979, Ch. 864.)

1020. It is the intent of the Legislature in enacting this chapter to establish a citation system for the imposition of prompt and effective civil sanctions against violators of the laws and regulations of this state relating to the employment of workers by unlicensed contractors and the utilization of unlicensed contractors and other persons who are not valid independent contractors by licensed contractors.

(Amended by Stats. 1982, Ch. 761, Sec. 1.)

1021. Any person who does not hold a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who employs any worker to perform services for which a license is required, shall be subject to a civil penalty in the amount of two hundred dollars ($200) per employee for each day of employment. The civil penalties provided for by this section are in addition to any other penalty provided by law.

(Amended by Stats. 2003, Ch. 329, Sec. 6. Effective January 1, 2004.)

1021.5. Any person who holds a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who willingly and knowingly enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of independent contractor status pursuant to Section 2750.5 or hold a valid state contractor's license, shall be subject to a civil penalty in the amount of two hundred dollars ($200) per person so contracted with for each day of the contract. The civil penalties provided for by this section are in addition to any other penalty provided by law.

(Amended by Stats. 2003, Ch. 329, Sec. 7. Effective January 1, 2004.)

1022. If upon inspection or investigation the Labor Commissioner determines that any person is employing workers in violation of Section 1021 or 1021.5, he or she may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated.

(Amended by Stats. 1982, Ch. 761, Sec. 3.)

1023. (a) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, he or she shall within 15 business days after service of the citation notify the office of the Labor Commissioner which appears on the citation of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from that finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(b) A person to whom a citation has been issued, shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(c) When no petition objecting to a citation or the proposed assessment of a civil penalty is filed, a certified copy of the citation or proposed civil penalty may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty.

(d) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty after hearing, a certified copy of the findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(Amended by Stats. 1988, Ch. 96, Sec. 5.)

1024. (a) It is the intent of the Legislature in enacting this section to provide for the prompt and effective enforcement of labor laws relating to the construction industry.

(b) Before July 1, 2013, all civil penalties collected pursuant to this chapter shall be deposited in the Industrial Relations Construction Industry Enforcement Fund. All moneys in the fund shall be used for the purpose of enforcing this chapter, as appropriated by the Legislature.

(c) On or after July 1, 2013, all civil penalties collected pursuant to this chapter shall be deposited in the Labor Enforcement and Compliance Fund.

(Amended by Stats. 2013, Ch. 28, Sec. 38. Effective June 27, 2013.)

Chapter 3.6. Employer Use of Consumer Credit Reports

(Chapter 3.6 added by Stats. 2011, Ch. 724, Sec. 2.)

1024.5. (a) An employer or prospective employer shall not use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following:

(1) A managerial position.

(2) A position in the state Department of Justice.

(3) That of a sworn peace officer or other law enforcement position.

(4) A position for which the information contained in the report is required by law to be disclosed or obtained.

(5) A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person:

(A) Bank or credit card account information.

(B) Social security number.

(C) Date of birth.

(6) A position in which the person is, or would be, any of the following:

(A) A named signatory on the bank or credit card account of the employer.

(B) Authorized to transfer money on behalf of the employer.

(C) Authorized to enter into financial contracts on behalf of the employer.

(7) A position that involves access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and (ii) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information.

(8) A position that involves regular access to cash totaling ten thousand dollars ($10,000) or more of the employer, a customer, or client, during the workday.

(b) This section does not apply to a person or business subject to Sections 6801 to 6809, inclusive, of Title 15 of the United States Code and state and federal statutes or regulations implementing those sections if the person or business is subject to compliance oversight by a state or federal regulatory agency with respect to those laws.

(c) The following definitions apply to this section:

(1) "Consumer credit report" has the same meaning as defined in subdivision (c) of Section 1785.3 of the Civil Code, but does not include a report that (A) verifies income or employment, and (B) does not include credit-related information, such as credit history, credit score, or credit record.

(2) "Managerial position" means an employee covered by the executive exemption set forth in subparagraph (1) of paragraph (A) of Section 1 of Wage Order 4 of the Industrial Welfare Commission (8 Cal. Code Regs. 11040).

(Added by Stats. 2011, Ch. 724, Sec. 2. Effective January 1, 2012.)

1024.6. An employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee because the employee updates or attempts to update his or her personal information based on a lawful change of name, social security number, or federal employment authorization document. An employer's compliance with this section shall not serve as the basis for a claim of discrimination, including any disparate treatment claim.

(Amended by Stats. 2014, Ch. 79, Sec. 3. Effective January 1, 2015.)

Chapter 3.7. Alcohol and Drug Rehabilitation

(Heading of Chapter 3.7 amended by Stats. 1987, Ch. 506, Sec. 1.)

1025. Every private employer regularly employing 25 or more employees shall reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, provided that this reasonable accommodation does not impose an undue hardship on the employer.

Nothing in this chapter shall be construed to prohibit an employer from refusing to hire, or discharging an employee who, because of the employee's current use of alcohol or drugs, is unable to perform his or her duties, or cannot perform the duties in a manner which would not endanger his or her health or safety or the health or safety of others.

(Amended by Stats. 1987, Ch. 506, Sec. 2.)

1026. The employer shall make reasonable efforts to safeguard the privacy of the employee as to the fact that he or she has enrolled in an alcohol or drug rehabilitation program.

(Amended by Stats. 1987, Ch. 506, Sec. 3.)

1027. Nothing in this chapter shall be construed to require an employer to provide time off with pay, except that an employee may use sick leave to which he or she is entitled for the purpose of entering and participating in an alcohol or drug rehabilitation program.

(Amended by Stats. 1987, Ch. 506, Sec. 4.)

1028. An employee may file a complaint with the Labor Commissioner if he or she believes that he or she has been denied reasonable accommodation as required by this chapter. Sections 98, 98.1, 98.2, 98.3, 98.4, 98.5, 98.6, and 98.7 shall be applicable to a complaint filed pursuant to this section.

(Added by Stats. 1984, Ch. 1103, Sec. 1.)

Chapter 3.8. Lactation Accommodation

(Chapter 3.8 added by Stats. 2001, Ch. 821, Sec. 1.)

1030. Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.

(Added by Stats. 2001, Ch. 821, Sec. 1. Effective January 1, 2002.)

1031. The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

(Added by Stats. 2001, Ch. 821, Sec. 1. Effective January 1, 2002.)

1032. An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.

(Added by Stats. 2001, Ch. 821, Sec. 1. Effective January 1, 2002.)

1033. (a) An employer who violates any provision of this chapter shall be subject to a civil penalty in the amount of one hundred dollars ($100) for each violation.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a violation of this chapter has occurred, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of this chapter shall be the same as those set forth in Section 1197.1.

(c) Notwithstanding any other provision of this code, violations of this chapter shall not be misdemeanors under this code.

(Added by Stats. 2001, Ch. 821, Sec. 1. Effective January 1, 2002.)

Chapter 3.9. Employee Literacy Assistance

(Chapter 3.9 added by Stats. 1991, Ch. 339, Sec. 2.)

1040. This chapter shall be known and may be cited as the Employee Literacy Education Assistance Act.

(Added by Stats. 1991, Ch. 339, Sec. 2.)

1041. (a) Every private employer regularly employing 25 or more employees shall reasonably accommodate and assist any employee who reveals a problem of illiteracy and requests employer assistance in enrolling in an adult literacy education program, provided that this reasonable accommodation does not impose an undue hardship on the employer.

(b) For purposes of this section, employer assistance includes, but is not limited to, providing the employee with the locations of local literacy education programs or arranging for a literacy education provider to visit the jobsite.

(Added by Stats. 1991, Ch. 339, Sec. 2.)

1042. The employer shall make reasonable efforts to safeguard the privacy of the employee as to the fact that he or she has a problem with illiteracy.

(Added by Stats. 1991, Ch. 339, Sec. 2.)

1043. Nothing in this chapter shall be construed to require an employer to provide time off with pay for an employee to enroll and participate in an adult literacy education program.

(Added by Stats. 1991, Ch. 339, Sec. 2.)

1044. An employee who reveals a problem of illiteracy and who satisfactorily performs his or her work shall not be subject to termination of employment because of the disclosure of illiteracy.

(Added by Stats. 1991, Ch. 339, Sec. 2.)

Chapter 4. Reemployment Privileges

(Chapter 4 enacted by Stats. 1937, Ch. 90.)

1050. Any person, or agent or officer thereof, who, after having discharged an employee from the service of such person or after an employee has voluntarily left such service, by any misrepresentation prevents or attempts to prevent the former employee from obtaining employment, is guilty of a misdemeanor.

(Amended by Stats. 1981, Ch. 513, Sec. 1.)

1051. Except as provided in Section 1057, any person or agent or officer thereof, who requires, as a condition precedent to securing or retaining employment, that an employee or applicant for employment be photographed or fingerprinted by any person who desires his or her photograph or fingerprints for the purpose of furnishing the same or information concerning the same or concerning the employee or applicant for employment to any other employer or third person, and these photographs and fingerprints could be used to the detriment of the employee or applicant for employment is guilty of a misdemeanor.

(Amended by Stats. 1987, Ch. 77, Sec. 1.)

1052. Any person who knowingly causes, suffers, or permits an agent, superintendent, manager, or employee in his employ to commit a violation of sections 1050 and 1051, or who fails to take all reasonable steps within his power to prevent such violation is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1053. Nothing in this chapter shall prevent an employer or an agent, employee, superintendent or manager thereof from furnishing, upon special request therefor, a truthful statement concerning the reason for the discharge of an employee or why an employee voluntarily left the service of the employer. If such statement furnishes any mark, sign, or other means conveying information different from that expressed by words therein, such fact, or the fact that such statement or other means of furnishing information was given without a special request therefor is prima facie evidence of a violation of sections 1050 to 1053.

(Enacted by Stats. 1937, Ch. 90.)

1054. In addition to and apart from the criminal penalty provided any person or agent or officer thereof, who violates any provision of sections 1050 to 1052, inclusive, is liable to the party aggrieved, in a civil action, for treble damages. Such civil action may be brought by such aggrieved person or his assigns, or successors in interest, without first establishing any criminal liability under this article.

(Enacted by Stats. 1937, Ch. 90.)

1055. Every public utility corporation shall, upon request by any employee leaving its service, give to such employee a letter stating the period of service and the kind of service rendered to the public utility corporation by the employee.

(Enacted by Stats. 1937, Ch. 90.)

1056. Every public utility corporation violating Section 1055 is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each offense, which fine shall be collected by the district attorney of the county in which the public utility corporation has its principal place of business.

(Amended by Stats. 1983, Ch. 1092, Sec. 203. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1057. Section 1051 shall not apply to any employee of a diversified or nondiversified management company, as defined in Section 80a-5 of Title 15 of the United States Code, and the affiliates thereof, as defined in Sections 80a-2(a)(2) and 80a-2(a)(3) of Title 15 of the United States Code, who is required to be fingerprinted pursuant to federal law.

(Added by Stats. 1987, Ch. 77, Sec. 2.)

Chapter 4.5. Displaced Janitor Opportunity Act

(Chapter 4.5 added by Stats. 2001, Ch. 795, Sec. 1.)

1060. The following definitions shall apply throughout this chapter:

(a) "Awarding authority" means any person that awards or otherwise enters into contracts for janitorial or building maintenance services performed within the State of California, including any subcontracts for janitorial or building maintenance services.

(b) "Contractor" means any person that employs 25 or more individuals and that enters into a service contract with the awarding authority.

(c) "Employee" means any person employed as a service employee of a contractor or subcontractor who works at least 15 hours per week and whose primary place of employment is in the State of California under a contract to provide janitorial or building maintenance services. "Employee" does not include a person who is a managerial, supervisory, or confidential

employee, including those employees who would be so defined under the federal Fair Labor Standards Act.

(d) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(e) "Service contract" means any contract that has the principal purpose of providing services through the use of service employees.

(f) "Subcontractor" means any person who is not an employee who enters into a contract with a contractor to assist the contractor in performing a service contract.

(g) "Successor service contract" means a service contract for the performance of essentially the same services as were previously performed pursuant to a different service contract at the same facility that terminated within the previous 30 days. A service contract entered into more than 30 days after the termination of a predecessor service contract shall be considered a "successor service contract" if its execution was delayed for the purpose of avoiding application of this chapter.

(Added by Stats. 2001, Ch. 795, Sec. 1. Effective January 1, 2002.)

1061. (a) (1) If an awarding authority notifies a contractor that the service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority shall indicate in that notification whether a successor service contract has been or will be awarded in its place and, if so, shall identify the name and address of the successor contractor. The terminated contractor shall, within three working days after receiving that notification, provide to the successor contractor identified by the awarding authority, the name, date of hire, and job classification of each employee employed at the site or sites covered by the terminated service contract at the time of the contract termination.

(2) If the terminated contractor has not learned the identity of the successor contractor, if any, the terminated contractor shall provide that information to the awarding authority, which shall be responsible for providing that information to the successor contractor as soon as that contractor has been selected.

(3) The requirements of this section shall be equally applicable to all subcontractors of a terminated contractor.

(b) (1) A successor contractor or successor subcontractor shall retain, for a 60-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer at the site or sites covered by the successor service contract unless the successor contractor or successor subcontractor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract. This requirement shall be stated by awarding authorities in all initial bid packages that are governed by this chapter.

(2) The successor contractor or successor subcontractor shall make a written offer of employment to each employee, as required by this section, in the employee's primary language or another language in which the employee is literate. That offer shall state the time within which the employee must accept that offer, but in no case may that time be less than 10 days. Nothing in this section requires the successor contractor or successor subcontractor to pay the same wages or offer the same benefits as were provided by the prior contractor or prior subcontractor.

(3) If at any time the successor contractor or successor subcontractor determines that fewer employees are needed to perform services under the successor service contract or successor subcontract than were required by the terminated contractor under the terminated contract or terminated subcontract, the successor contractor or successor subcontractor shall retain employees by seniority within the job classification.

(c) The successor contractor or successor subcontractor, upon commencing service under the successor service contract, shall provide a list of its employees and a list of employees of its subcontractors providing services at the site or sites covered under that contract to the awarding authority. These lists shall indicate which of these employees were employed at the site or sites by the terminated contractor or terminated subcontractor. The successor contractor or successor subcontractor shall also provide a list of any of the terminated contractor's employees who were not retained either by the successor contractor or successor subcontractor, stating the reason these employees were not retained.

(d) During the 60-day transition employment period, the successor contractor or successor subcontractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor or successor subcontractor from which the successor contractor or successor subcontractor shall hire additional employees until such time as all of the terminated contractor's or terminated subcontractor's employees have been offered employment with the successor contractor or successor subcontractor.

(e) During the initial 60-day transition employment period, the successor contractor or successor subcontractor shall not discharge without cause an employee retained pursuant to this chapter. Cause shall be based only on the performance or conduct of the particular employee.

(f) At the end of the 60-day transition employment period, a successor contractor or successor subcontractor shall provide a written performance evaluation to each employee retained pursuant to this chapter. If the employee's performance during that 60-day period is satisfactory, the successor contractor or successor subcontractor shall offer the employee continued employment. Any employment after the 60-day transition employment period shall be at-will employment under which the employee may be terminated without cause.

(Added by Stats. 2001, Ch. 795, Sec. 1. Effective January 1, 2002.)

1062. (a) An employee, who was not offered employment or who has been discharged in violation of this chapter by a successor contractor or successor subcontractor, or an agent of the employee may bring an action against a successor contractor or successor subcontractor in any superior court of the State of California having jurisdiction over the successor contractor or successor subcontractor. Upon finding a violation of this chapter, the court shall award backpay, including the value of benefits, for each day during which the violation has occurred and continues to occur. The amount of backpay shall be calculated as the greater of either of the following:

(1) The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification multiplied by the average hours worked during the last three years of the employee's employment.

(2) The final regular rate of pay received by the employee at the time of termination of the predecessor contract multiplied by the number of hours usually worked by the employee.

(b) The court may order a preliminary or permanent injunction to stop the continued violation of this chapter.

(c) If the employee is the prevailing party in the legal action, the court shall award the employee reasonable attorney's fees and costs as part of the costs recoverable.

(d) In the absence of a claim by an employee that he or she was terminated in violation of this chapter, an employee may not maintain a cause of action under this chapter solely for the failure of an employer to provide a written performance evaluation.

(Added by Stats. 2001, Ch. 795, Sec. 1. Effective January 1, 2002.)

1063. (a) This chapter only applies to contracts entered into on or after January 1, 2002.

(b) Except for the obligations specified in subdivisions (a) and (b) of Section 1061, nothing in this chapter changes or increases the relationship or duties of a property owner or an awarding authority, or their agents, with respect to contractors, subcontractors, or their employees.

(c) Nothing in this chapter limits the right of a property owner or an awarding authority to terminate a service contract or to replace a contractor with another contractor or with the property owner's or awarding authority's own employees.

(Added by Stats. 2001, Ch. 795, Sec. 1. Effective January 1, 2002.)

1063.5. (a) This chapter shall apply to every contractor that provides food and beverage services at a publicly owned entertainment venue.

(b) For purposes of this chapter, and in addition to the definitions specified in Section 1060, the following terms shall also have the following meanings:

(1) "Awarding authority" means any person that awards or otherwise enters into contracts for food and beverage services at a publicly owned entertainment venue.

(2) "Contractor" means any person that employs an individual to provide food and beverage services at a publicly owned entertainment venue.

(3) "Employee" means any person employed to provide food and beverage services at a publicly owned entertainment venue.

(4) "Publicly owned entertainment venue" means a venue that meets all of the following:

(A) Has been in operation for 15 years or more.

(B) Is located in a zone designated under Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Hosts concerts, shows, or sporting events on a noncontinuous basis.

(c) This section shall remain in effect only until December 31, 2014, and as of that date is repealed.

(Added by Stats. 2013, Ch. 28, Sec. 39. Effective June 27, 2013.)

1064. Nothing in this chapter shall prohibit a local government agency from enacting ordinances relating to displaced janitors that impose greater standards than, or establish additional enforcement provisions to, those prescribed by this chapter.

(Added by Stats. 2001, Ch. 795, Sec. 1. Effective January 1, 2002.)

1065. If any provision or provisions of this chapter or any application thereof is held invalid, that invalidity shall not affect any other provisions or applications of this chapter that can be given effect notwithstanding that invalidity.

(Added by Stats. 2001, Ch. 795, Sec. 1. Effective January 1, 2002.)

Chapter 4.6. Public Transit Service Contracts and Contracts for the Collection and Transportation of Solid Waste

(Heading of Chapter 4.6 amended by Stats. 2016, Ch. 874, Sec. 1.)

1070. The Legislature finds and declares all of the following:

(a) That when public agencies with jurisdiction over public transit services or the collection and transportation of solid waste award contracts to operate bus and rail services, or to provide for the collection and transportation of solid waste to a new contractor, qualified employees of the prior contractor who are not reemployed by the successor contractor face significant economic dislocation as a result.

(b) That those displaced employees rely unnecessarily upon the unemployment insurance system, public social services, and health programs, increasing costs to these vital government programs and placing a significant burden upon both the government and the taxpayers.

(c) That it serves an important social purpose to establish incentives for contractors who bid on public transit service contracts or contracts for the collection and transportation of solid waste to retain qualified employees of the prior contractor to perform the same or similar work.

(Amended by Stats. 2016, Ch. 874, Sec. 2. Effective January 1, 2017.)

1071. The following definitions apply to this chapter:

(a) "Awarding authority" means any local government agency, including any city, county, special district, transit district, joint powers authority, or nonprofit corporation that awards or otherwise enters into contracts for public transit services or for the collection and transportation of solid waste performed within the State of California.

(b) "Bidder" means any person who submits a bid to an awarding authority for a public transit service contract, an exclusive contract for the collection and transportation of solid waste, or a subcontract.

(c) "Contractor" means any person who enters into a public transit service contract or an exclusive contract for the collection and transportation of solid waste with an awarding authority.

(d) "Employee" means any individual who works for a contractor or subcontractor under a contract. "Employee" does not include an executive, administrative, or professional employee exempt from the payment of overtime compensation within the meaning of subdivision (a) of Section 515 or any person who is not an "employee" as defined under Section 2(3) of the National Labor Relations Act (29 U.S.C. Sec. 152(3)).

(e) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(f) "Public transit services" means the provision of passenger transportation services to the general public, including paratransit service.

(g) "Service contract" means any contract the principal purpose of which is to provide public transit services or the exclusive right to provide collection and transportation of solid waste through the use of employees.

(h) "Solid waste" has the same meaning as defined in Section 40191 of the Public Resources Code.

(i) "Subcontractor" means any person who is not an employee who enters into a contract with a contractor to perform a portion of the contractor's express obligations under a service contract.

"Subcontractor" does not include a contractor's vendors, suppliers, insurers, or other service providers.

(Amended by Stats. 2016, Ch. 874, Sec. 3. Effective January 1, 2017.)

1072. (a) A bidder shall declare as part of the bid for a service contract whether or not the bidder will retain the employees of the prior contractor or subcontractor for a period of not less than 90 days, as provided in this chapter, if awarded the service contract.

(b) An awarding authority letting a service contract out to bid shall give a 10 percent preference to any bidder who agrees to retain the employees of the prior contractor or subcontractor pursuant to subdivision (a).

(c) (1) If the awarding authority announces that it intends to let a service contract out to bid, the existing service contractor, within a reasonable time, shall provide to the awarding authority the number of employees who are performing services under the service contract and the wage rates, benefits, and job classifications of those employees. In addition, the existing service contractor shall make this information available to any entity that the awarding authority has identified as a bona fide bidder. This information shall be made available to each bona fide bidder in writing at least 30 days before bids for the service contract are due, whether by inclusion of the information in the request for bids or otherwise. If the successor service contract is awarded to a new contractor, the existing contractor shall provide the names, addresses, dates of hire, wages, benefit levels, and job classifications of employees to the successor contractor. The duties imposed by this subdivision shall be contained in all service contracts.

(2) A successor contractor or subcontractor who agrees to retain employees pursuant to subdivision (a) shall retain employees who have been employed by the prior contractor or subcontractors, except for reasonable and substantiated cause. That cause is limited to the particular employee's performance or conduct while working under the prior contract or the employee's failure of any controlled substances and alcohol test, physical examination, criminal background check required by law as a condition of employment, or other standard hiring qualification lawfully required by the successor contractor or subcontractor.

(3) The successor contractor or subcontractor shall make a written offer of employment to each employee to be retained pursuant to subdivision (a). That offer shall state the time within which the employee must accept that offer, but in no case less than 10 days. Nothing in this section requires the successor contractor or subcontractor to pay the same wages or offer the same benefits provided by the prior contractor or subcontractor.

(4) If, at any time, the successor contractor or subcontractor determines that fewer employees are required than were required under the prior contract or subcontract, the successor contractor or subcontractor shall retain qualified employees by seniority within the job classification. In determining those employees who are qualified, the successor contractor or subcontractor may require an employee to possess any license that is required by law to operate the equipment that the employee will operate as an employee of the successor contractor or subcontractor.

(Amended by Stats. 2016, Ch. 874, Sec. 4. Effective January 1, 2017.)

1073. (a) An employee who was not offered employment or who has been discharged in violation of this chapter, or his or her agent, may bring an action against the successor contractor or subcontractor in any superior court having jurisdiction over the successor contractor or subcontractor. Upon finding a violation of this chapter, the court shall order reinstatement to employment with the successor contractor or subcontractor and award backpay, including the value of benefits, for each day of violation. A violation of this chapter continues for each day that the successor contractor or subcontractor fails to employ the employee, within the period agreed to pursuant to Section 1072.

(b) The court may preliminarily or permanently enjoin the continued violation of this chapter.

(c) If the employee prevails in an action brought under this chapter, the court shall award the employee reasonable attorney's fees and costs as part of the costs recoverable.

(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.)

1074. (a) Upon its own motion or upon the request of any member of the public, an awarding authority may terminate any service contract made pursuant to Section 1072 if both of the following occur:

(1) The contractor or subcontractor has substantially breached the contract.

(2) The awarding authority holds a public hearing within 30 days of the receipt of the request or its announcement of its intention to terminate.

(b) A contractor or subcontractor terminated pursuant to subdivision (a) shall be ineligible to bid on or be awarded a service contract or subcontract with that awarding authority for a period of not less than one year and not more than three years, to be determined by the awarding authority.

(Added by Stats. 2003, Ch. 103, Sec. 1. Effective January 1, 2004.)

1075. Notwithstanding any other provision of this chapter, the following shall apply to service contracts for the collection and transportation of solid waste:

(a) A successor contractor or subcontractor shall be required to retain only employees of a contractor or subcontractor under a prior service contract whose employment would be terminated if the service contract were awarded to another contractor or subcontractor.

(b) A successor contractor or subcontractor shall not be required to retain an employee of a contractor or subcontractor under a prior service contract under any of the following circumstances:

(1) If the employee of the prior contractor or subcontractor does not meet any standard hiring qualification lawfully required by the successor contractor or subcontractor for the position.

(2) If the successor contractor or subcontractor would be required to terminate or reassign an existing employee covered under a collective bargaining agreement with the successor contractor or subcontractor in order to hire the employee of the prior contractor or subcontractor.

(3) If, and to the extent, the actual number of employees meeting the requirements of this chapter exceeds the number of those employees communicated to bona fide bidders in accordance with paragraph (1) of subdivision (c) of Section 1072.

(c) An employee or his or her agent shall not bring an action against a successor contractor or subcontractor under subdivision (a) of Section 1073 without first giving the successor contractor or subcontractor written notice of the violation or breach and 30 days to cure the violation or breach. An awarding authority shall not terminate a service contract under subdivision (a) of Section 1074 without first giving the successor contractor or subcontractor written notice of the violation or breach and 30 days to cure the violation or breach.

(d) This chapter shall only apply to service contracts for the collection and transportation of solid waste when an awarding agency decides to let an exclusive solid waste collection and transportation contract out to bid. It is not intended to determine whether or not a local agency should procure a service contract

by inviting bids, extend an existing service contract, renegotiate its service contract with the prior contractor, or exercise any other right it possesses pursuant to Section 40059 of the Public Resources Code to determine aspects of solid waste handling that are of local concern.

(e) This chapter does not modify, limit, or abrogate in any manner any franchise, contract, license, or permit granted or extended by a city, county, or other local government agency before January 1, 2017.

(Added by Stats. 2016, Ch. 874, Sec. 5. Effective January 1, 2017.)

1076. The amendments and additions to this chapter made by the act adding this section shall not apply to contracts awarded before January 1, 2017, or to contracts for which the bid process has been completed before January 1, 2017.

(Added by Stats. 2016, Ch. 874, Sec. 6. Effective January 1, 2017.)

Chapter 5. Political Affiliations

(Chapter 5 enacted by Stats. 1937, Ch. 90.)

1101. No employer shall make, adopt, or enforce any rule, regulation, or policy:

(a) Forbidding or preventing employees from engaging or participating in politics or from becoming candidates for public office.

(b) Controlling or directing, or tending to control or direct the political activities or affiliations of employees.

(Enacted by Stats. 1937, Ch. 90.)

1102. No employer shall coerce or influence or attempt to coerce or influence his employees through or by means of threat of discharge or loss of employment to adopt or follow or refrain from adopting or following any particular course or line of political action or political activity.

(Enacted by Stats. 1937, Ch. 90.)

1102.5. (a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

(e) A report made by an employee of a government agency to his or her employer is a disclosure of information to a government or law enforcement agency pursuant to subdivisions (a) and (b).

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars ($10,000) for each violation of this section.

(g) This section does not apply to rules, regulations, or policies that implement, or to actions by employers against employees who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950) of, or the physician-patient privilege of Article 6 (commencing with Section 990) of, Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

(h) An employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have, engaged in any acts protected by this section.

(i) For purposes of this section, "employer" or "a person acting on behalf of the employer" includes, but is not limited to, a client employer as defined in paragraph (1) of subdivision (a) of Section 2810.3 and an employer listed in subdivision (b) of Section 6400.

(Amended by Stats. 2015, Ch. 792, Sec. 2. Effective January 1, 2016.)

1102.6. In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.

(Added by Stats. 2003, Ch. 484, Sec. 3. Effective January 1, 2004.)

1102.7. (a) The office of the Attorney General shall maintain a whistleblower hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees.

(b) The Attorney General shall refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.

(c) During the initial review of a call received pursuant to subdivision (a), the Attorney General or appropriate government agency shall hold in confidence information disclosed through the whistleblower hotline, including the identity of the caller disclosing the information and the employer identified by the caller.

(d) A call made to the whistleblower hotline pursuant to subdivision (a) or its referral to an appropriate agency under subdivision (b) may not be the sole basis for a time period under a statute of limitation to commence. This section does not change existing law relating to statutes of limitation.

(Added by Stats. 2003, Ch. 484, Sec. 4. Effective January 1, 2004.)

1102.8. (a) An employer shall prominently display in lettering larger than size 14 point type a list of employees' rights

and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline described in Section 1102.7.

(b) Any state agency required to post a notice pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code shall be deemed in compliance with the posting requirement set forth in subdivision (a) if the notice posted pursuant to Section 8548.2 of the Government Code or subdivision (b) of Section 6128 of the Penal Code also contains the whistleblower hotline number described in Section 1102.7.

(Amended by Stats. 2004, Ch. 820, Sec. 1. Effective September 27, 2004.)

1103. An employer or any other person or entity that violates this chapter is guilty of a misdemeanor punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine not to exceed one thousand dollars ($1,000) or both that fine and imprisonment, or, in the case of a corporation, by a fine not to exceed five thousand dollars ($5,000).

(Amended by Stats. 2013, Ch. 732, Sec. 7. Effective January 1, 2014.)

1104. In all prosecutions under this chapter, the employer is responsible for the acts of his managers, officers, agents, and employees.

(Enacted by Stats. 1937, Ch. 90.)

1105. Nothing in this chapter shall prevent the injured employee from recovering damages from his employer for injury suffered through a violation of this chapter.

(Enacted by Stats. 1937, Ch. 90.)

1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, 1104, and 1105, "employee" includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California.

(Amended by Stats. 2003, Ch. 484, Sec. 7. Effective January 1, 2004.)

Chapter 6. Agreements in Connection With Trade Disputes

(Chapter 6 enacted by Stats. 1937, Ch. 90.)

1110. No agreement, combination, or contract, by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the State is criminal, if the same act committed by one person would not be punishable as a crime. This chapter does not authorize violence, or threats thereof.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 7. Jurisdictional Strikes

(Chapter 7 added by Stats. 1947, Ch. 1388.)

1115. A jurisdictional strike as herein defined is hereby declared to be against the public policy of the State of California and is hereby declared to be unlawful.

(Added by Stats. 1947, Ch. 1388.)

1116. Any person injured or threatened with injury by violation of any of the provisions hereof shall be entitled to injunctive relief therefrom in a proper case, and to recover any damages resulting therefrom in any court of competent jurisdiction.

(Added by Stats. 1947, Ch. 1388.)

1117. As used herein, "labor organization" means any organization or any agency or employee representation committee or any local unit thereof in which employees participate, and exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours of employment or conditions of work, which labor organization is not found to be or to have been financed in whole or in part, interfered with, dominated or controlled by the employer or any employer association within one year of the commencement of any proceeding brought under this chapter. The plaintiff shall have the affirmative of the issue with respect to establishing the existence of a "labor organization" as defined herein.

As used herein, "person" means any person, association, organization, partnership, corporation, limited liability company, unincorporated association, or labor organization.

(Amended by Stats. 1994, Ch. 1010, Sec. 179. Effective January 1, 1995.)

1118. As used in this chapter, "jurisdictional strike" means a concerted refusal to perform work for an employer or any other concerted interference with an employer's operation or business, arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to bargain collectively with an employer on behalf of his employees or any of them, or arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to have its members perform work for an employer.

(Added by Stats. 1947, Ch. 1388.)

1119. Nothing in this chapter shall be construed to interfere with collective bargaining subject to the prohibitions herein set forth, nor to prohibit any individual voluntarily becoming or remaining a member of a labor organization, or from personally requesting any other individual to join a labor organization.

(Added by Stats. 1947, Ch. 1388.)

1120. If any provision of this chapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Added by Stats. 1947, Ch. 1388.)

1122. Any person who organizes an employee group which is financed in whole or in part, interfered with or dominated or controlled by the employer or any employer association, as well as such employer or employer association, shall be liable to suit by any person who is injured thereby. Said injured party shall recover the damages sustained by him and the costs of suit.

(Added by Stats. 1955, Ch. 1417.)

Chapter 7.5. Collective Bargaining Agreements

(Chapter 7.5 added by Stats. 1941, Ch. 1188.)

1126. Any collective bargaining agreement between an employer and a labor organization shall be enforceable at law or in equity, and a breach of such collective bargaining agreement by any party thereto shall be subject to the same remedies, including injunctive relief, as are available on other contracts in the courts of this State.

(Added by Stats. 1941, Ch. 1188.)

1127. (a) Where a collective bargaining agreement between an employer and a labor organization contains a successor clause, such clause shall be binding upon and enforceable against any successor employer who succeeds to the contracting employer's business until the expiration date of the agreement stated in the agreement. No such successor clause shall be binding upon or enforceable against any successor employer for more than three years from the effective date of the collective bargaining

agreement between the contracting employer and the labor organization.

(b) As used in this section, "successor employer" means any purchaser, assignee, or transferee of a business the employees of which are subject to a collective bargaining agreement, if such purchaser, assignee, or transferee conducts or will conduct substantially the same business operation, or offer the same service, and use the same physical facilities, as the contracting employer.

(c) This section shall not apply to a receiver or trustee in bankruptcy of any contracting employer who has gone into receivership or bankruptcy, or to any employer who acquires a business from a receiver or trustee in bankruptcy, or to any employer which is a public entity, or to any employer who is subject to the National Labor Relations Act, Agricultural Labor Relations Act of 1975, or the Railway Labor Act.

(d) An employer who is a party to a collective bargaining agreement containing a successor clause has the affirmative duty to disclose the existence of such agreement and such clause to any successor employer. Such disclosure requirement shall be satisfied by including in any contract of sale, agreement to purchase, or any similar instrument of conveyance, a statement that the successor employer is bound by such successor clause as provided for in the collective bargaining agreement.

(Added by Stats. 1976, Ch. 1057.)

1128. (a) Where a party to a collective bargaining agreement prevails in a court action to compel arbitration of disputes concerning the collective bargaining agreement, the court shall award attorney's fees to the prevailing party unless the other party has raised substantial and credible issues involving complex or significant questions of law or fact regarding whether or not the dispute is arbitrable under the agreement.

If the dispute is later found to be not arbitrable under the collective bargaining agreement, any award made pursuant to this subdivision shall be vacated and those sums paid to satisfy the award shall be reimbursed to the payor.

(b) Where a party to a collective bargaining agreement appeals the decision of an arbitrator regarding disputes concerning the collective bargaining agreement, the court shall award attorney's fees to the prevailing appellee unless the appellant has raised substantial issues involving complex or significant questions of law.

(c) Where a party to a collective bargaining agreement prevails in a court action to compel compliance with the decision or award of an arbitrator or a grievance panel regarding disputes concerning the collective bargaining agreement, the court shall award attorney's fees to the prevailing party unless the other party has raised substantial issues involving complex or significant questions of law.

(d) This section shall not apply to public employment.

(Amended by Stats. 1986, Ch. 1211, Sec. 2.)

Chapter 8. Professional Strikebreakers

(Chapter 8 repealed and added by Stats. 1976, Ch. 1079.)

Article 1. Findings and Declarations

(Article 1 added by Stats. 1976, Ch. 1079.)

1130. The Legislature hereby makes the following findings and declarations:

Relations between organized labor and management in this state have for many years been marked by a mature adherence to the principles of good faith, collective bargaining and mutual respect for the rights, interest and well-being of working people, business and industry. The importation or use in this state of professional strikebreakers as replacements during a strike or lockout endangers such sound and beneficial relations between labor and management.

Experience in this state and in other parts of this country demonstrates that the utilization of professional strikebreakers in labor disputes is inimical to the public welfare and good order, in that such practices tend to produce and prolong industrial strife, frustrate collective bargaining and encourage violence, crimes and other disorders.

The aforementioned evils are beyond the regulation of applicable federal law, and the mitigation and correction thereof requires the exercise of the police power of this state.

(Added by Stats. 1976, Ch. 1079.)

Article 2. Definitions

(Article 2 added by Stats. 1976, Ch. 1079.)

1132. Unless provided otherwise, the definitions in this article govern the construction of this chapter.

(Added by Stats. 1976, Ch. 1079.)

1132.2. "Employer" means a person, partnership, firm, corporation, association, or other entity, which employs any person or persons to perform services for a wage or salary, and includes any person, partnership, firm, corporation, limited liability company, association or other entity acting as an agent of an employer, directly or indirectly.

(Amended by Stats. 1994, Ch. 1010, Sec. 180. Effective January 1, 1995.)

1132.4. "Employee" means any person who performs services for wages or salary under a contract of employment, express or implied, for an employer.

(Added by Stats. 1976, Ch. 1079.)

1132.6. "Strike" means any concerted act of more than 50 percent of the bargaining unit employees in a lawful refusal of such employees under applicable state or federal law to perform work or services for an employer, other than work stoppages based on conflicting union jurisdictions or work stoppages unauthorized by the proper union governing body.

(Added by Stats. 1976, Ch. 1079.)

1132.8. "Lockout" means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees.

(Added by Stats. 1976, Ch. 1079.)

1133. "Professional strikebreaker" means any person other than supervisorial personnel who have been in the employ of the employer before the commencement of the strike or lockout or members of the immediate family of the owner of the place of business:

(1) Who during a period of five years immediately preceding the acts described in subdivision (2) of this section has offered himself and has been accepted on repeated occasions to two or more employers at whose places of business a strike or lockout was currently in progress, for employment for the duration of such strike or lockout for the purpose of replacing an employee or employees involved in such strike or lockout, and

(2) Who currently offers himself to an employer at whose place of business a strike or lockout is presently in progress for employment for the purpose of replacing an employee or employees involved in such strike or lockout.

As used in this section:

(a) "Repeated occasions" means on three or more occasions (exclusive of any current offer for employment in connection with a current strike or lockout).

(b) "Employment for the duration of such strike or lockout" includes employment for all or part of the duration of such strike or lockout; and, in connection therewith, includes services during all or part of such strike or lockout which began no more than one month prior to the initiation thereof, or, in the alternative, which concluded not later than one month after the termination of such strike or lockout.

(c) "Employment" means services for an employer, whether compensated by wages, salary, or any other consideration not limited to the foregoing and whether secured, arranged or paid for by an employer or any other person, partnership, firm, corporation, association or other entity.

(d) "Supervisorial personnel" means those employees who have the authority to hire, fire, reward, or discipline other employees of the employer, or who have a history of having had the authority to effectively recommend such action.

(Added by Stats. 1976, Ch. 1079.)

Article 3. Professional Strikebreakers

(Article 3 added by Stats. 1976, Ch. 1079.)

1134. It shall be unlawful for any employer willingly and knowingly to utilize any professional strikebreaker to replace an employee or employees involved in a strike or lockout at a place of business located within this state.

(Added by Stats. 1976, Ch. 1079.)

1134.2. It shall be unlawful for any professional strikebreaker willingly and knowingly to offer himself for employment or to replace an employee or employees involved in a strike or lockout at a place of business located within this state.

(Added by Stats. 1976, Ch. 1079.)

Article 4. Miscellaneous

(Article 4 added by Stats. 1976, Ch. 1079.)

1136. Any person, partnership, firm, corporation, association or other entity, or officer or agent thereof, who shall violate any of the provisions of this chapter shall upon conviction thereof be subject to a fine not to exceed one thousand dollars ($1,000), or imprisonment for a period not to exceed 90 days, or both such fine and imprisonment, in the discretion of the court.

(Amended by Stats. 1983, Ch. 1092, Sec. 204. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1136.2. If any part of the provisions of this chapter, or the application thereof, to any person or circumstance is held invalid in the final judgment of a court of competent jurisdiction, the remainder of this chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby, and this chapter shall otherwise continue in full force and effect and shall otherwise be fully operative. To this end, the provisions of this chapter, and each of them, are hereby declared to be severable.

(Amended by Stats. 1977, Ch. 579.)

Chapter 10. Unlawful Acts During Labor Disputes

(Chapter 10 added by Stats. 1999, Ch. 616, Sec. 1.)

1138. No officer or member of any association or organization, and no association or organization, participating or interested in a labor dispute, shall be held responsible or liable in any court of this state for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of those acts.

(Added by Stats. 1999, Ch. 616, Sec. 1. Effective January 1, 2000.)

1138.1. (a) No court of this state shall have authority to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, of all of the following:

(1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorized those acts.

(2) That substantial and irreparable injury to complainant's property will follow.

(3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief.

(4) That complainant has no adequate remedy at law.

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

(b) The hearing shall be held after due and personal notice thereof has been given, in the manner that the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property. However, if a complainant also alleges that, unless a temporary restraining order is issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of those five days. No temporary restraining order shall be issued unless the judicial officer issuing the temporary restraining order first hears oral argument from the opposing party or opposing party's attorney, except in the instances specified in subparagraphs (B) and (C) of paragraph (2) of subdivision (c) of Section 527 of the Code of Civil Procedure. No temporary restraining order or temporary injunction shall be issued except on the condition that the complainant first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of the order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(c) The undertaking shall be an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against the complainant and surety, upon a hearing to assess damages of which hearing the complainant and surety shall have reasonable notice, the complainant and surety submitting themselves to the jurisdiction of the court for that purpose. Nothing contained in this section

shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his or her ordinary remedy by suit at law or in equity.

(Added by Stats. 1999, Ch. 616, Sec. 1. Effective January 1, 2000.)

1138.2. No restraining order or injunctive relief shall be granted to any complainant involved in the labor dispute in question who has failed to comply with any obligation imposed by law, or who has failed to make every reasonable effort to settle that dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

(Added by Stats. 1999, Ch. 616, Sec. 1. Effective January 1, 2000.)

1138.3. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of the restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of the specific act or acts as may be expressly complained of in the complaint or petition filed in such case and as shall be expressly included in findings of fact made and filed by the court.

(Added by Stats. 1999, Ch. 616, Sec. 1. Effective January 1, 2000.)

1138.4. The term "labor dispute" as used in this chapter has the same meaning as set forth in clauses (i), (ii), and (iii) of paragraph (4) of subdivision (b) of Section 527.3 of the Code of Civil Procedure.

(Added by Stats. 1999, Ch. 616, Sec. 1. Effective January 1, 2000.)

1138.5. Sections 1138.1, 1138.2, and 1138.3 shall not apply to any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(Added by Stats. 1999, Ch. 616, Sec. 1. Effective January 1, 2000.)

Part 3.5. Agricultural Labor Relations

(Part 3.5 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Chapter 1. General Provisions and Definitions

(Chapter 1 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1140. This part shall be known and may be referred to as the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1140.2. It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part is adopted to provide for collective-bargaining rights for agricultural employees.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1140.4. As used in this part:

(a) The term "agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

(b) The term "agricultural employee" or "employee" shall mean one engaged in agriculture, as such term is defined in subdivision (a). However, nothing in this subdivision shall be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

Further, nothing in this part shall apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above.

As used in this subdivision, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(c) The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.

(d) The term "person" shall mean one or more individuals, corporations, partnerships, limited liability companies, associations, legal representatives, trustees in bankruptcy, receivers, or any other legal entity, employer, or labor organization having an interest in the outcome of a proceeding under this part.

(e) The term "representatives" includes any individual or labor organization.

(f) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees.

(g) The term "unfair labor practice" means any unfair labor practice specified in Chapter 4 (commencing with Section 1153) of this part.

(h) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the

disputants stand in the proximate relation of employer and employee.

(i) The term "board" means Agricultural Labor Relations Board.

(j) The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(Amended by Stats. 1994, Ch. 1010, Sec. 181. Effective January 1, 1995.)

Chapter 2. Agricultural Labor Relations Board

(Chapter 2 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Article 1. Agricultural Labor Relations Board: Organization

(Article 1 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1141. (a) There is hereby created in the Labor and Workforce Development Agency the Agricultural Labor Relations Board, which shall consist of five members.

(b) The members of the board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members shall be five years, and the terms shall be staggered at one-year intervals. Upon the initial appointment, one member shall be appointed for a term ending January 1, 1977, one member shall be appointed for a term ending January 1, 1978, one member shall be appointed for a term ending January 1, 1979, one member shall be appointed for a term ending January 1, 1980, and one member shall be appointed for a term ending January 1, 1981. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired term of the member to whose term he or she is succeeding. The Governor shall designate one member to serve as chairperson of the board. Any member of the board may be removed by the Governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(Amended by Stats. 2002, Ch. 859, Sec. 12. Effective January 1, 2003.)

1142. (a) The principal office of the board shall be in Sacramento, but it may meet and exercise any or all of its power at any other place in California.

(b) Besides the principal office in Sacramento, as provided in subdivision (a), the board may establish offices in such other cities as it shall deem necessary. The board may delegate to the personnel of these offices such powers as it deems appropriate to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists, to direct an election by a secret ballot pursuant to the provisions of Chapter 5 (commencing with Section 1156), and to certify the results of such election, and to investigate, conduct hearings and make determinations relating to unfair labor practices. The board may review any action taken pursuant to the authority delegated under this section upon a request for a review of such action filed with the board by an interested party. Any such review made by the board shall not, unless specifically ordered by the board, operate as a stay of any action taken. The entire record considered by the board in considering or acting upon any such request or review shall be made available to all parties prior to such consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1142.5. (a) The board shall maintain, at its principal office, a telephone line 24 hours a day, seven days a week, for the purpose of providing interested persons with information concerning their rights and responsibilities under this part, or for referring such persons to the appropriate agency or entity with the capacity to render advice or help in dealing with any situation arising out of agricultural labor disputes.

In order to carry out its responsibilities pursuant to this subdivision, the board may contract with an answering service to receive telephone messages during periods of time that its principal office is normally not open for business. Such messages shall be transmitted to the board on the board's next business day, or at such earlier time as the board specifies, or to its designated representative at the earliest possible time.

(b) Whenever a petition for an election has been filed in a bargaining unit in which a majority of the employees are engaged in a strike, the necessary and appropriate services of the board in the region in which the election will be held shall be available to the parties involved 24 hours a day until the election is held.

(Amended by Stats. 1979, Ch. 468.)

1143. The board shall, at the close of each fiscal year, make a report in writing to the Legislature and to the Governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the board, and an account of all moneys it has disbursed.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1144. The board may from time to time make, amend, and rescind, in the manner prescribed in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, such rules and regulations as may be necessary to carry out this part.

(Amended by Stats. 1983, Ch. 142, Sec. 99.)

1144.5. (a) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this part, except a hearing to determine an unfair labor practice charge.

(b) Notwithstanding Sections 11425.30 and 11430.10 of the Government Code, in a hearing to determine an unfair labor practice charge, a person who has participated in a determination of probable cause, injunctive or other pre-hearing relief, or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or as a supervisor of the presiding officer or may assist or advise the presiding officer in the same proceeding.

(Added by Stats. 1995, Ch. 938, Sec. 73. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)

1145. The board may appoint an executive secretary and such attorneys, hearing officers, administrative law officers, and other employees as it may from time to time find necessary for the proper performance of its duties. Attorneys appointed pursuant to this section may, at the discretion of the board, appear for and represent the board in any case in court. All employees appointed by the board shall perform their duties in an objective and impartial manner without prejudice toward any party subject to the jurisdiction of the board.

(Amended by Stats. 1978, Ch. 1072.)

1146. The board is authorized to delegate to any group of three or more board members any or all the powers which it may itself exercise. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and three members shall at all times constitute a quorum. A vacancy shall be filled in the same manner as an original appointment.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1147. Each member of the board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1983, Ch. 803, Sec. 40.)

1148. The board shall follow applicable precedents of the National Labor Relations Act, as amended.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1149. There shall be a general counsel of the board who shall be appointed by the Governor, subject to confirmation by a majority of the Senate, for a term of four years. The general counsel shall have the power to appoint such attorneys, administrative assistants, and other employees as necessary for the proper exercise of his duties. The general counsel of the board shall exercise general supervision over all attorneys employed by the board (other than administrative law officers and legal assistants to board members), and over the officers and employees in the regional offices. He shall have final authority, on behalf of the board, with respect to the investigation of charges and issuance of complaints under Chapter 6 (commencing with Section 1160) of this part, and with respect to the prosecution of such complaints before the board. He shall have such other duties as the board may prescribe or as may be provided by law. All employees appointed by the general counsel shall perform their duties in an objective and impartial manner without prejudice toward any party subject to the jurisdiction of the board. In case of a vacancy in the office of the general counsel, the Governor is authorized to designate the officer or employee who shall act as general counsel during such vacancy, but no person or persons so designated shall so act either (1) for more than 40 days when the Legislature is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

(Amended by Stats. 1978, Ch. 1072.)

1150. Each member of the board and the general counsel of the board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Article 2. Investigatory Powers

(Article 2 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1151. For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Chapters 5 (commencing with Section 1156) and 6 (commencing with Section 1160) of this part:

(a) The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The members of the board or their designees or their duly authorized agents shall have the right of free access to all places of labor. The board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the state at any designated place of hearing.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, any superior court in any county within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which such person allegedly guilty of contumacy or refusal to obey is found or resides or transacts business, shall, upon application by the board, have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1151.2. (a) No person shall be excused from attending and testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(b) No individual shall be granted immunity pursuant to subdivision (a) unless, at least 10 calendar days prior thereto, the board has given written notice, by registered mail, to the district attorney of each county who may have reasonable grounds for objecting to such grant of immunity. Such notice shall specify the subject matter of the inquiries to which the witness' answers are to be immunized from use.

The board may not grant immunity in any case where it finds that a district attorney has reasonable grounds for objecting to such grant of immunity provided that the board may disregard objections that are not accompanied by the declaration of the district attorney that he or she is familiar with the notice and which sets forth the grounds for resisting such grant of immunity.

(Amended by Stats. 1980, Ch. 1282.)

1151.3. Any party shall have the right to appear at any hearing in person, by counsel, or by other representative.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1151.4. (a) Complaints, orders, and other process and papers of the board, its members, agents, or agency, may be served either personally or by registered mail or by telegraph, or by leaving a copy thereof at the principal office or place of business

of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as provided in this subdivision shall be proof of service of the same. Witnesses summoned before the board, its members, agents, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the state.

(b) All process of any court to which application may be made under this part may be served in the county where the defendant or other person required to be served resides or may be found.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1151.5. The several departments and agencies of the state upon request by the board, shall furnish the board all records, papers, and information in their possession, not otherwise privileged, relating to any matter before the board.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1151.6. Any person who shall willfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this part shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five thousand ($5,000) dollars.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Chapter 3. Rights of Agricultural Employees

(Chapter 3 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1152. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Chapter 4. Unfair Labor Practices and Regulation of Secondary Boycotts

(Chapter 4 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1153. It shall be an unfair labor practice for an agricultural employer to do any of the following:

(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.

(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. However, subject to such rules and regulations as may be made and published by the board pursuant to Section 1144, an agricultural employer shall not be prohibited from permitting agricultural employees to confer with him during working hours without loss of time or pay.

(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

(d) To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this part.

(e) To refuse to bargain collectively in good faith with labor organizations certified pursuant to the provisions of Chapter 5 (commencing with Section 1156) of this part.

(f) To recognize, bargain with, or sign a collective-bargaining agreement with any labor organization not certified pursuant to the provisions of this part.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1154. It shall be an unfair labor practice for a labor organization or its agents to do any of the following:

(a) To restrain or coerce:

(1) Agricultural employees in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

(2) An agricultural employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

(b) To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the membership requirements specified in subdivision (c) of Section 1153.

(c) To refuse to bargain collectively in good faith with an agricultural employer, provided it is the representative of his employees subject to the provisions of Chapter 5 (commencing with Section 1156) of this part.

(d) To do either of the following: (i) To engage in, or to induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or (ii) to threaten, coerce, or restrain any person; where in either case (i) or (ii) an object thereof is any of the following:

(1) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by Section 1154.5.

(2) Forcing or requiring any person to cease using, selling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other

employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees. Nothing contained in this paragraph shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

(3) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his agricultural employees if another labor organization has been certified as the representative of such employees under the provisions of Chapter 5 (commencing with Section 1156) of this part.

(4) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, unless such employer is failing to conform to an order or certification of the board determining the bargaining representative for employees performing such work.

Nothing contained in this subdivision (d) shall be construed to prohibit publicity, including picketing for the purpose of truthfully advising the public, including consumers, that a product or products or ingredients thereof are produced by an agricultural employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services at the establishment of the employer engaged in such distribution, and as long as such publicity does not have the effect of requesting the public to cease patronizing such other employer.

However, publicity which includes picketing and has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization is currently certified as the representative of the primary employer's employees.

Further, publicity other than picketing, but including peaceful distribution of literature which has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization has not lost an election for the primary employer's employees within the preceding 12-month period, and no other labor organization is currently certified as the representative of the primary employer's employees.

Nothing contained in this subdivision (d) shall be construed to prohibit publicity, including picketing, which may not be prohibited under the United States Constitution or the California Constitution.

Nor shall anything in this subdivision (d) be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

(e) To require of employees covered by an agreement authorized under subdivision (c) of Section 1153 the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the agriculture industry and the wages currently paid to the employees affected.

(f) To cause or attempt to cause an agricultural employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

(g) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees, in any of the following cases:

(1) Where the employer has lawfully recognized in accordance with this part any other labor organization and a question concerning representation may not appropriately be raised under Section 1156.3.

(2) Where within the preceding 12 months a valid election under Chapter 5 (commencing with Section 1156) of this part has been conducted.

Nothing in this subdivision shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver, or transport any goods or not to perform any services.

Nothing in this subdivision (g) shall be construed to permit any act which would otherwise be an unfair labor practice under this section.

(h) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with the labor organization as a representative of his employees unless such labor organization is currently certified as the collective-bargaining representative of such employees.

(i) Nothing contained in this section shall be construed to make unlawful a refusal by any person to enter upon the premises of any agricultural employer, other than his own employer, if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this part.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1154.5. It shall be an unfair labor practice for any labor organization which represents the employees of the employer and such employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be, to such extent, unenforceable and void. Nothing in this section shall apply to an agreement between a labor organization and an employer relating to a supplier of an ingredient or ingredients which are integrated into a product produced or distributed by such employer where the labor organization is certified as the representative of the employees of such supplier, but no collective-bargaining agreement between such supplier and such labor organization is in effect. Further, nothing in this section shall apply to an agreement between a labor organization and an agricultural employer relating to the contracting or subcontracting of work to be done at the site of the farm and related operations. Nothing in this part shall

prohibit the enforcement of any agreement which is within the foregoing exceptions.

Nor shall anything in this section be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1154.6. It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155. The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155.2. (a) For purposes of this part, to bargain collectively in good faith is the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) Upon the filing by any person of a petition not earlier than the 90th day nor later than the 60th day preceding the expiration of the 12-month period following initial certification, the board shall determine whether an employer has bargained in good faith with the currently certified labor organization. If the board finds that the employer has not bargained in good faith, it may extend the certification for up to one additional year, effective immediately upon the expiration of the previous 12-month period following initial certification.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155.3. (a) Where there is in effect a collective-bargaining contract covering agricultural employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification does all of the following:

(1) Serves a written notice upon the other party to the contract of the proposed termination or modification not less than 60 days prior to the expiration date thereof, or, in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification.

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

(3) Notifies the Conciliation Service of the State of California within 30 days after such notice of the existence of a dispute, provided no agreement has been reached by that time.

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract, for a period of 60 days after such notice is given, or until the expiration date of such contract, whichever occurs later.

(b) The duties imposed upon agricultural employers and labor organizations by paragraphs (2), (3), and (4) of subdivision (a) shall become inapplicable upon an intervening certification of the board that the labor organization or individual which is a party to the contract has been superseded as, or has ceased to be the representative of the employees, subject to the provisions of Chapter 5 (commencing with Section 1156) of this part, and the duties so imposed shall not be construed to require either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the 60-day period specified in this section shall lose his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute, for the purposes of Section 1153 to 1154 inclusive, and Chapters 5 (commencing with Section 1156) and 6 (commencing with Section 1160) of this part, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155.4. It shall be unlawful for any agricultural employer or association of agricultural employers, or any person who acts as a labor relations expert, adviser, or consultant to an agricultural employer, or who acts in the interest of an agricultural employer, to pay, lend, or deliver, any money or other thing of value to any of the following:

(a) Any representative of any of his agricultural employees.

(b) Any agricultural labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the agricultural employees of such employer.

(c) Any employee or group or committee of employees of such employer in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.

(d) Any officer or employee of an agricultural labor organization with intent to influence him in respect to any of his actions, decisions, or duties as a representative of agricultural employees or as such officer or employee of such labor organization.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155.5. It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by Section 1155.4.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155.6. Nothing in Section 1155.4 or 1155.5 shall apply to any matter set forth in subsection (c) of Section 186 of Title 29 of the United States Code.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1155.7. Nothing in this chapter shall be construed to apply or be applicable to any labor organization in its representation of workers who are not agricultural employees. Any such labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedents.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Chapter 5. Labor Representatives and Elections

(Chapter 5 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1156. Representatives designated or selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment. Any individual agricultural employee or a group of agricultural employees shall have the right at any time to present grievances to their agricultural employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at such adjustment.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1156.2. The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1156.3. (a) A petition that is either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit may be filed by an agricultural employee or group of agricultural employees, or any individual or labor organization acting on behalf of those agricultural employees, in accordance with any rules and regulations prescribed by the board. The petition shall allege all of the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.

(3) That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the employer named in the petition.

(4) That the petition is not barred by an existing collective bargaining agreement.

(b) Upon receipt of a signed petition, as described in subdivision (a), the board shall immediately investigate the petition. If the board has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If, at the time the election petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of the petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

(c) The board shall make available at any election held under this chapter ballots printed in English and Spanish. The board may also make available at the election ballots printed in any other language as may be requested by an agricultural labor organization or any agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where the choice is between labor organizations, shall provide the employee with the opportunity to vote against representation by a labor organization by providing an appropriate space designated "No Labor Organizations."

(d) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

(e) (1) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) were incorrect, asserting that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

(2) Upon receipt of a petition under this subdivision, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. This hearing may be conducted by an officer or employee of a regional office of the board. The officer may not make any recommendations with respect to the certification of the election. The board may refuse to certify the election if it finds, on the record of the hearing, that any of the assertions made in the petition filed pursuant to this subdivision are correct, that the election was not conducted properly, or that misconduct affecting the results of the election occurred. The board shall certify the election unless it determines that there are sufficient grounds to refuse to do so.

(f) Notwithstanding any other provision of law, if the board refuses to certify an election because of employer misconduct that, in addition to affecting the results of the election, would render slight the chances of a new election reflecting the free and fair choice of employees, the labor organization shall be certified as the exclusive bargaining representative for the bargaining unit.

(g) If no petition is filed pursuant to subdivision (e) within five days of the election, the board shall certify the election.

(h) The board shall decertify a labor organization if either of the following occur:

(1) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(2) The United States Equal Employment Opportunity Commission finds, pursuant to Section 2000e-5 of Title 42 of the United States Code, that the labor organization engaged in discrimination on the basis of race, color, national origin, religion, sex, or any other arbitrary or invidious classification in violation of Subchapter VI of Chapter 21 of Title 42 of the United States Code during the period of the labor organization's present certification.

(i) (1) With regard to elections held pursuant to this section or Section 1156.7, the following time limits apply for action by the board, and agents acting pursuant to authority delegated by the board:

(A) (i) The board shall, within 21 days of the filing of election objections or the submittal of evidence in support of challenges to ballots, evaluate the election objections or challenged ballots and issue a decision determining which, if any, must be set for hearing.

(ii) The hearing on election objections or challenged ballots set pursuant to clause (i) shall be scheduled to commence within 28 days of the date of the board's decision to set a hearing.

(B) The investigative hearing examiner (IHE) appointed pursuant to Section 1145 shall issue a recommended decision within 60 days of the close of the hearing on the matters described in subparagraph (A). Upon mutual agreement of the parties, the IHE may extend the time period to issue a recommended decision by 30 days.

(C) The board shall issue a decision regarding the election objections or challenged ballots within 45 days of receipt of any exceptions to the decision of the IHE.

(2) The board may consolidate a challenged ballot hearing with a hearing on objections to an election.

(3) The board may grant extensions on the time limits specified in this subdivision upon a showing of good cause or by stipulation of all affected parties.

(Amended by Stats. 2011, Ch. 697, Sec. 1. Effective January 1, 2012.)

1156.4. Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.

In this connection, the peak agricultural employment for the prior season shall alone not be a basis for such determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1156.5. The board shall not direct an election in any bargaining unit where a valid election has been held in the immediately preceding 12-month period.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1156.6. The board shall not direct an election in any bargaining unit which is represented by a labor organization that has been certified within the immediately preceding 12-month period or whose certification has been extended pursuant to subdivision (b) of Section 1155.2.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1156.7. (a) No collective-bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election.

(b) A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of his employees pursuant to this chapter shall be a bar to a petition for an election among such employees for the term of the agreement, but in any event such bar shall not exceed three years, provided that both the following conditions are met:

(1) The agreement is in writing and executed by all parties thereto.

(2) It incorporates the substantive terms and conditions of employment of such employees.

(c) Upon the filing with the board by an employee or group of employees of a petition signed by 30 percent or more of the agricultural employees in a bargaining unit represented by a certified labor organization which is a party to a valid collective-bargaining agreement, requesting that such labor organization be decertified, the board shall conduct an election by secret ballot pursuant to the applicable provisions of this chapter, and shall certify the results to such labor organization and employer.

However, such a petition shall not be deemed timely unless it is filed during the year preceding the expiration of a collective-bargaining agreement which would otherwise bar the holding of an election, and when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(d) Upon the filing with the board of a signed petition by an agricultural employee or group of agricultural employees, or any individual or labor organization acting in their behalf, accompanied by authorization cards signed by a majority of the employees in an appropriate bargaining unit, and alleging all the conditions of paragraphs (1), (2), and (3), the board shall immediately investigate such petition and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct an election by secret ballot pursuant to the applicable provisions of this chapter:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment for the current calendar year.

(2) That no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing thereof.

(3) That a labor organization, certified for an appropriate unit, has a collective-bargaining agreement with the employer which would otherwise bar the holding of an election and that this agreement will expire within the next 12 months.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1157. All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition of such an election shall be eligible to vote. An economic striker shall be eligible to vote under such regulations as the board shall find are consistent with the purposes and provisions of this part in any election, provided that the striker who has been permanently replaced shall not be eligible to vote in any election conducted more than 12 months after the commencement of the strike.

In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such effective date, the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective-bargaining agreement or the commencement of a strike; provided, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1157.2. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1157.3. Employers shall maintain accurate and current payroll lists containing the names and addresses of all their employees, and shall make such lists available to the board upon request.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1158. Whenever an order of the board made pursuant to Section 1160.3 is based in whole or in part upon the facts certified following an investigation pursuant to Sections 1156.3 to 1157.2, inclusive, and there is a petition for review of the order, the certification and the record of the investigation shall be included in the transcript of the entire record required to be filed under Section 1160.8 and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in the transcript. The filing of a petition for review described in this section shall not be grounds for a stay of proceedings conducted pursuant to Chapter 6.5 (commencing with Section 1164).

(Amended by Stats. 2011, Ch. 697, Sec. 2. Effective January 1, 2012.)

1159. In order to assure the full freedom of association, self-organization, and designation of representatives of the employees own choosing, only labor organizations certified pursuant to this part shall be parties to a legally valid collective-bargaining agreement.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Chapter 6. Prevention of Unfair Labor Practices and Judicial Review and Enforcement

(Chapter 6 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160. The board is empowered, as provided in this chapter, to prevent any person from engaging in any unfair labor practice, as set forth in Chapter 4 (commencing with Section 1153) of this part.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.2. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agency or agencies, at a place therein fixed, not less than five days after the serving of such complaint. No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing, or the board in its discretion, at any time prior to the issuance of an order based thereon. The person so complained against shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the board, any other person may be allowed to intervene in the proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the Evidence Code. All proceedings shall be appropriately reported.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.3. The testimony taken by such member, agent, or agency, or the board in such hearing shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board, upon notice, may take further testimony or hear argument. If, upon the preponderance of the testimony taken, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, to take affirmative action, including reinstatement of employees with or without backpay, and making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of this part. Where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If, upon the preponderance of the testimony taken, the board shall be of the opinion that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the board, or before an administrative law officer thereof, such member, or such administrative law officer, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, which shall be filed with the board, and, if no exceptions are filed within 20 days after service thereof upon such parties, or within such further period as the board may authorize, such recommended order shall become the order of the board and become effective as therein prescribed.

Until the record in a case shall have been filed in a court, as provided in this chapter, the board may, at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.4. (a) The board may, upon finding reasonable cause to believe that any person has engaged in or is engaging in an unfair labor practice, petition the superior court in any county wherein the unfair labor practice in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of the petition, the board shall cause notice thereof to be served upon the person, and thereupon the court shall have jurisdiction to grant to the board such temporary relief or restraining order as the court deems just and proper.

(b) (1) In addition to any harm resulting directly from an adverse employment action or other allegedly unlawful action, the court shall consider the indirect effect upon protected rights of all agricultural employees of the employer in determining whether temporary relief or a restraining order is just and proper.

(2) When the alleged unfair labor practice is such that, by its nature, it would interfere with the free choice of employees to choose or not choose an exclusive bargaining representative, appropriate temporary relief or a restraining order shall issue on a showing that reasonable cause exists to believe that the unfair labor practice has occurred. The order shall remain in effect until an election has been held or for 30 days, whichever occurs first. Thereafter, a preliminary injunction may issue if it is shown to be just and proper.

(c) Notwithstanding Section 916 of the Code of Civil Procedure, temporary relief or restraining orders granted pursuant to this section shall not be stayed pending appeal.

(Amended by Stats. 2011, Ch. 697, Sec. 3. Effective January 1, 2012.)

1160.5. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) of subdivision (d) of Section 1154, the board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless within 10 days after notice that such charge has been filed, the parties to such dispute submit to the board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.6. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (1), (2), or (3) of subdivision (d), or of subdivision (g), of Section 1154, or of Section 1155, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the board, petition the superior court in the county in which the unfair labor practice in question has occurred, is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. The officer or regional attorney shall make all reasonable efforts to advise the party against whom the restraining order is sought of his intention to seek such order at least 24 hours prior to doing so. In the event the officer or regional attorney has been unable to advise such party of his intent at least 24 hours in advance, he shall submit a declaration to the court under penalty of perjury setting forth in detail the efforts he has made. Upon the filing of any such petition, the superior court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Upon the filing of any such petition, the board shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony. For the purposes of this section, the superior court shall be deemed to have jurisdiction of a labor organization either in the county in which such organization maintains its principal office, or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate, the procedure specified herein shall apply to charges with respect to paragraph (4) of subdivision (d) of Section 1154.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.7. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subdivision (c) of Section 1153 or subdivision (b) of Section 1154, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under Section 1160.6.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.8. Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein such person resides or transacts business, by filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board's order. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

An order directing an election shall not be stayed pending review, but such order may be reviewed as provided in Section 1158.

If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce such order by writ of injunction or other proper process. The court shall not review the merits of the order.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1160.9. The procedures set forth in this chapter shall be the exclusive method of redressing unfair labor practices.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1161. (a) The Agricultural Employee Relief Fund is hereby created as a special fund in the State Treasury and is continuously appropriated to the Agricultural Labor Relations Board for the purposes specified in subdivision (c). The board shall act as a trustee of all moneys deposited in the fund.

(b) Any monetary relief ordered by the board pursuant to this part to be paid by an employer to an employee shall be collected by the board on behalf of the employee. All monetary relief so collected by the board shall be remitted to the employee for whom the board collected the money.

(c) (1) Notwithstanding Section 1519 of the Code of Civil Procedure, if the board has made a diligent effort to locate an employee on whose behalf the board has collected monetary

relief pursuant to this part, and is unable to locate the employee or the lawful representative of the employee for a period of two years after the date the board collected the monetary relief, the board shall deposit those moneys in the fund.

(2) Moneys in the fund shall be used by the board to pay employees the unpaid balance of any monetary relief ordered by the board to be paid by an employer to an employee. Prior to making any payment from the fund, the board first shall make a finding that, in an individual case, the collection of the full amount of the monetary relief ordered is not possible after reasonable efforts have been made to collect the balance from the employer.

(d) As used in this section, "fund" means the Agricultural Employee Relief Fund.

(e) On or before July 1, 2002, the board shall report to the Legislature on the status of the fund.

(Amended by Stats. 2002, Ch. 664, Sec. 160. Effective January 1, 2003.)

Chapter 6.5. Contract Dispute Resolution

(Chapter 6.5 added by Stats. 2002, Ch. 1145, Sec. 2.)

1164. (a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following (1) 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11, (2) 90 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003, (3) 60 days after the board has certified the labor organization pursuant to subdivision (f) of Section 1156.3, or (4) 60 days after the board has dismissed a decertification petition upon a finding that the employer has unlawfully initiated, supported, sponsored, or assisted in the filing of a decertification petition a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. "Agricultural employer," for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation Service may include names chosen from its own mediators, or from a list of names supplied by the American Arbitration Association or the Federal Mediation Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

(e) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings, including:

(1) The stipulations of the parties.

(2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union's wage and benefit demands.

(3) The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.

(4) The corresponding wages, benefits, and terms and conditions of employment prevailing in comparable firms or industries in geographical areas with similar economic conditions, taking into account the size of the employer, the skills, experience, and training required of the employees, and the difficulty and nature of the work performed.

(5) The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed.

(Amended by Stats. 2011, Ch. 697, Sec. 4. Effective January 1, 2012.)

1164.3. (a) Either party, within seven days of the filing of the report by the mediator, may petition the board for review of the report. The petitioning party shall, in the petition, specify the particular provisions of the mediator's report for which it is seeking review by the board and shall specify the specific grounds authorizing review by the board. The board, within 10 days of receipt of a petition, may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact, or (3) a provision of the collective bargaining agreement set forth in the mediator's report is arbitrary or capricious in light of the mediator's findings of fact.

(b) If it finds grounds exist to grant review within the meaning of subdivision (a), the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board. If the board does not accept a petition for review or no petition for review is filed, then the mediator's report shall become a final order of the board.

(c) The board shall issue a decision concerning the petition and if it determines that a provision of the collective bargaining agreement contained in the mediator's report violates the provisions of subdivision (a), it shall, within 21 days, issue an order requiring the mediator to modify the terms of the collective

bargaining agreement. The mediator shall meet with the parties for additional mediation for a period not to exceed 30 days. At the expiration of this mediation period, the mediator shall prepare a second report resolving any outstanding issues. The second report shall be filed with the board.

(d) Either party, within seven days of the filing of the mediator's second report, may petition the board for a review of the mediator's second report pursuant to the procedures specified in subdivision (a). If no petition is filed, the mediator's report shall take immediate effect as a final order of the board. If a petition is filed, the board shall issue an order confirming the mediator's report and order it into immediate effect, unless it finds that the report is subject to review for any of the grounds specified in subdivision (a), in which case the board shall determine the issues and shall issue a final order of the board.

(e) Either party, within seven days of the filing of the report by the mediator, may petition the board to set aside the report if a prima facie case is established that any of the following have occurred: (1) the mediator's report was procured by corruption, fraud, or other undue means, (2) there was corruption in the mediator, or (3) the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator. For the sole purpose of interpreting the terms of paragraphs (1), (2), and (3), case law that interprets similar terms used in Section 1286.2 of the Code of Civil Procedure shall apply. If the board finds that any of these grounds exist, the board shall within 10 days vacate the report of the mediator and shall order the selection and appointment of a new mediator, and an additional mediation period of 30 days, pursuant to Section 1164.

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal.

(Amended by Stats. 2003, Ch. 870, Sec. 2. Effective January 1, 2004.)

1164.5. (a) Within 30 days after the order of the board takes effect, a party may petition for a writ of review in the court of appeal or the California Supreme Court. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the board to certify its record in the case to the court within the time specified. The petition for review shall be served personally upon the executive director of the board and the nonappealing party personally or by service.

(b) The review by the court shall not extend further than to determine, on the basis of the entire record, whether any of the following occurred:

(1) The board acted without, or in excess of, its powers or jurisdiction.

(2) The board has not proceeded in the manner required by law.

(3) The order or decision of the board was procured by fraud or was an abuse of discretion.

(4) The order or decision of the board violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(c) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

(Added by Stats. 2002, Ch. 1145, Sec. 2. Effective January 1, 2003.)

1164.7. (a) The board and each party to the action or proceeding before the mediator may appear in the review proceeding. Upon the hearing, the court of appeal or the Supreme Court shall enter judgment either affirming or setting aside the order of the board.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings instituted under this chapter.

(Added by Stats. 2002, Ch. 1145, Sec. 2. Effective January 1, 2003.)

1164.9. No court of this state, except the court of appeal or the Supreme Court, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the board to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the board in the performance of its official duties, as provided by law and the rules of court.

(Added by Stats. 2002, Ch. 1145, Sec. 2. Effective January 1, 2003.)

1164.11. A demand made pursuant to paragraph (1) of subdivision (a) of Section 1164 may be made only in cases which meet all of the following criteria: (a) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them.

(Amended (as added by Stats. 2002, Ch. 1145) by Stats. 2002, Ch. 1146, Sec. 3. Effective January 1, 2003.)

1164.12. To ensure an orderly implementation of the mediation process ordered by this chapter, a party may not file a total of more than 75 declarations with the board prior to January 1, 2008. In calculating the number of declarations so filed, the identity of the other party with respect to whom the declaration is filed, shall be irrelevant.

(Amended by Stats. 2003, Ch. 870, Sec. 3. Effective January 1, 2004.)

1164.13. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2002, Ch. 1145, Sec. 2. Effective January 1, 2003.)

Chapter 7. Suits Involving Employers and Labor Organizations

(Chapter 7 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1165. (a) Suits for violation of contracts between an agricultural employer and an agricultural labor organization representing agricultural employees, as defined in this part, or between any such labor organizations, may be brought in any superior court having jurisdiction of the parties, without respect to the amount in controversy.

(b) Any agricultural labor organization which represents agricultural employees and any agricultural employer shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state. Any money judgment against a labor organization in a superior court shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1165.2. For the purpose of this part, the superior court shall have jurisdiction over a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in representing or acting for employee members.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1165.3. The service of summons, subpoena, or other legal process of any superior court upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1165.4. For the purpose of this part, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Chapter 8. Limitations

(Chapter 8 added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1166. Nothing in this part, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on such right.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1166.2. Nothing in this part shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this part shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

1166.3. (a) If any provision of this part, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(b) If any other act of the Legislature shall conflict with the provisions of this part, this part shall prevail.

(Added by Stats. 1975, 3rd Ex. Sess., Ch. 1.)

Part 4. Employees

(Heading of Part 4 amended by Stats. 1972, Ch. 1122.)

Chapter 1. Wages, Hours and Working Conditions

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

1171. The provisions of this chapter shall apply to and include men, women and minors employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, but shall not include any individual employed as an outside salesman or any individual participating in a national service program carried out using assistance provided under Section 12571 of Title 42 of the United States Code.

Any individual participating in a national service program pursuant to Section 12571 of Title 42 of the United States Code shall be informed by the nonprofit, educational institution or other entity using his or her service, prior to the commencement of service of the requirement, if any, to work hours in excess of eight hours per day, or 40 hours per week, or both, and shall have the opportunity to opt out of that national service program at that time. Individuals participating in a national service program pursuant to Section 12571 of Title 42 of the United States Code shall not be discriminated against or be denied continued participation in the program for refusing to work overtime for a legitimate reason.

(Amended by Stats. 2000, Ch. 365, Sec. 3. Effective January 1, 2001.)

1171.5. The Legislature finds and declares the following:

(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2002, Ch. 1071, Sec. 4. Effective January 1, 2003.)

1173. It is the continuing duty of the Industrial Welfare Commission, hereinafter referred to in this chapter as the commission, to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees.

The commission shall conduct a full review of the adequacy of the minimum wage at least once every two years. The commission may, upon its own motion or upon petition, amend or rescind any order or portion of any order or adopt an order covering any occupation, trade, or industry not covered by an existing order pursuant to this chapter.

Before adopting any new rules, regulations, or policies, the commission shall consult with the Occupational Safety and Health Standards Board to determine those areas and subject matters where the respective jurisdictions of the commission and the Occupational Safety and Health Standards Board overlap. This consultation need not take the form of a joint meeting. In the case of such overlapping jurisdiction, the Occupational Safety and Health Standards Board shall have exclusive jurisdiction, and rules, regulations, or policies of the commission on the same subject have no force or effect.

(Amended by Stats. 1998, Ch. 150, Sec. 1. Effective January 1, 1999.)

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information that the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

(Amended by Stats. 2011, Ch. 655, Sec. 7. Effective January 1, 2012.)

1174.5. Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

(Amended by Stats. 2000, Ch. 135, Sec. 123. Effective January 1, 2001.)

1175. Any person, or officer or agent thereof, is guilty of a misdemeanor who:

(a) Neglects or refuses to furnish the information requested under the provisions of Section 1174.

(b) Refuses access to his place of business or employment to any member of the commission or employee of the Division of Labor Standards Enforcement when administering or enforcing this chapter.

(c) Hinders such member, or employee in securing information authorized by Section 1174.

(d) Fails to keep any of the records required by Section 1174.

(Amended by Stats. 1979, Ch. 373.)

1176. The commission or any members thereof may subpena witnesses and administer oaths. All witnesses subpenaed by the commission shall be paid the fees and mileage fixed by law in civil cases. In case of the failure of a person to comply with an order or subpena of the commission or any member thereof, or in the case of the refusal of a witness to testify to any matter regarding which he may lawfully be interrogated before any wage board or the commission, it shall be the duty of the superior court or judge thereof, on the application of a member of the commission, to compel obedience in a manner by which such obedience could be compelled in a proceeding pending before the court.

(Added by renumbering Section 1177 by Stats. 1949, Ch. 1454.)

1176.1. Any interested party may petition the commission requesting the adoption, amendment, or repeal of a regulation. The petition shall state clearly and concisely all of the following:

(a) The substance or nature of the regulation, amendment, or repeal that is requested.

(b) The reason for the request.

(c) Reference to the commission's authority to take the action that is requested.

(Added by Stats. 1987, Ch. 863, Sec. 1.)

1176.3. (a) Within 120 days of the receipt of a petition requesting the adoption, amendment, or repeal of a regulation, the commission shall notify the petitioner in writing of the receipt of the petition, set the matter for consideration at a public meeting, and issue a written decision taking one of the following actions:

(1) Setting the matter for public hearing pursuant to Section 1178 or 1178.5.

(2) Denying the petition. A decision denying a petition shall include a statement explaining the reasons for the denial.

(b) The petitioner may request reconsideration of any part or all of a decision denying a petition pursuant to paragraph (2) of subdivision (a) of Section 1176.3. The commission's reconsideration of any matter relating to a petition shall be subject to subdivision (a), except that a decision to deny reconsideration shall be final.

(c) In cases where a petition is referred to a wage board, the commission shall complete its final actions on the petition within 90 days after completion of the public hearing process pursuant to subdivision (c) of Section 1178.5.

(Added by Stats. 1987, Ch. 863, Sec. 2.)

1177. (a) The commission may make and enforce rules of practice and procedure and shall not be bound by the rules of evidence. Each order of the commission shall be concurred in by a majority of the commissioners.

(b) The commission shall prepare a statement as to the basis upon which an adopted or amended order is predicated. The statement shall be concurred in by a majority of the commissioners. The commission shall publish a copy of the statement with the order in the California Regulatory Notice Register. The commission also shall provide a copy of the statement to any interested party upon request.

(Amended by Stats. 1998, Ch. 150, Sec. 2. Effective January 1, 1999.)

1178. If after investigation the commission finds that in any occupation, trade, or industry, the wages paid to employees may be inadequate to supply the cost of proper living, or that the hours or conditions of labor may be prejudicial to the health, morals, or welfare of employees, the commission shall select a wage board to consider any of such matters and transmit to such wage board the information supporting its findings gathered in the investigation. Such investigation shall include at least one public hearing.

(Amended by Stats. 1980, Ch. 1083.)

1178.5. (a) If the commission finds that wages paid to employees may be inadequate to supply the cost of proper living, it shall select one wage board composed of an equal number of representatives of employers and employees, and a nonvoting representative of the commission, designated by the commission, who shall act as chairperson. The wage board shall consider the findings of the commission and such other information it deems appropriate and report to the commission its recommendation of a minimum wage adequate to supply the necessary cost of proper living to, and maintain the health and welfare of employees in this state, and its recommendations on such other matters related to the minimum wage on which the commission has requested recommendations.

(b) If the commission finds that hours or conditions of labor may be prejudicial to the health or welfare of employees in any occupation, trade, or industry, it shall select a wage board composed of an equal number of representatives of employers and employees in the occupation, trade, or industry in question, and a nonvoting representative of the commission, designated by the commission, who shall act as chairperson. The wage board shall consider the findings of the commission and such other information it deems appropriate and report to the commission its recommendation as to what action should be taken by the commission with respect to the matter under consideration.

(c) Prior to amending or rescinding any existing order or adopting any new order, and after receipt of the wage board report and recommendation, the commission shall prepare proposed regulations with respect to the matter under consideration. The proposed regulations shall include any recommendation of the wage board which received the support of at least two-thirds of the members of the wage board. A public hearing on the proposed regulations shall be held in each of at least three cities in this state, except when the proposed regulations would affect only an occupation, trade, or industry which is not statewide in scope, in which case a public hearing shall be held in the locality in which the occupation, trade, or industry prevails. The proceedings shall be recorded and transcribed and shall thereafter be a matter of public record.

(Repealed and added by Stats. 1980, Ch. 1083.)

1179. The members of the wage board shall be allowed fifty dollars ($50) per diem and necessary traveling expenses while engaged in such conferences. The commission shall make rules governing the number and selection of the members and the mode of procedure of the wage board, and shall exercise exclusive jurisdiction over all questions as to the validity of the procedure.

(Amended by Stats. 1980, Ch. 1083.)

1180. The proceedings and deliberations of the wage board shall be made a matter of record for the use of the commission, and shall be admissible as evidence in any proceedings before the commission.

(Added by renumbering Section 1181 by Stats. 1949, Ch. 1454.)

1181. Upon the fixing of the time and place for the holding of a hearing for the purpose of considering and acting upon the proposed regulations or any matters referred to in Sections 1176 to 1180, inclusive, the commission shall:

(a) Give public notice thereof by advertisement in at least one newspaper published in each of the cities of Los Angeles, Oakland, Sacramento, San Jose, Fresno, Eureka, San Diego, Long Beach, Alameda, Berkeley, Stockton, San Bernardino, and San Francisco.

(b) Mail a copy of the notice and the proposed regulations to the clerk of the superior court of each county in the state to be posted at the courthouse; to each association of employers or employees which, in the opinion of the commission, would be affected by the hearing; and to any person or organization within this state filing with the commission a written request for notice of such hearing. Failure to mail such notice shall not invalidate any order of the commission issued after such hearing.

The notice shall also state the time and place fixed for the hearing, which shall not be less than 30 days from the date of publication and mailing of such notices.

(Amended by Stats. 2002, Ch. 784, Sec. 523. Effective January 1, 2003.)

1182. (a) After receipt of the wage board report and the public hearings on the proposed regulations, the commission may, upon its own motion, amend or rescind an existing order or promulgate a new order. However, with respect to proposed regulations based on recommendations supported by at least two-thirds of the members of the wage board, the commission shall adopt such proposed regulations, unless it finds there is no substantial evidence to support such recommendations.

(b) If at any time the federal minimum wage applicable to employees covered by the Fair Labor Standards Act of 1938, as amended, prior to February 1, 1967, is scheduled to exceed the minimum wage fixed by the commission, the provisions of Sections 1178 and 1178.5 pertaining to wage boards shall be waived and the commission shall, in a public meeting, adopt an order fixing a new minimum wage at the scheduled higher federal minimum wage. The effective date of such order shall be the same as the effective date of the federal minimum wage, and such order shall not become operative in the event the scheduled increase in the federal minimum wage does not become operative.

(Repealed and added by Stats. 1980, Ch. 1083.)

1182.1. Any action taken by the commission pursuant to Sections 517 and 1182 shall be published in at least one newspaper in each of the Cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco. A summary of the action taken and notice of where the complete text of the new or amended order may be obtained may be published in lieu of the complete text when the commission determines such summary and notice will adequately inform the public. The statement as to the basis of the order need not be published.

(Amended by Stats. 1999, Ch. 134, Sec. 15. Effective January 1, 2000.)

1182.4. (a) No student employee, camp counselor, or program counselor of an organized camp shall be subject to a minimum wage or maximum hour order of the commission if the student employee, camp counselor, or program counselor receives a weekly salary of at least 85 percent of the minimum wage for a 40-hour week, regardless of the number of hours per week the student employee, camp counselor, or program counselor might work at the organized camp. If the student employee, camp counselor, or program counselor works less than 40 hours per week, the student employee, camp counselor, or program counselor shall be paid at least 85 percent of the minimum hourly wage for each hour worked.

(b) An organized camp may deduct the value of meals and lodging from the salary of a student employee, camp counselor, or program counselor pursuant to appropriate orders of the commission.

(c) As used in this section, "organized camp" means an organized camp, as defined in Section 18897 of the Health and Safety Code, which meets the standards of the American Camping Association.

(Amended by Stats. 1980, Ch. 379.)

1182.5. (a) The Legislature finds that the time permitted the Industrial Welfare Commission to consider daily overtime compensation petitions that are to be given priority attention by the commission pursuant to Section 20 of Chapter 1083 of the Statutes of 1980, has created unanticipated delays in the review and possible modification of applicable commission orders for preexisting workweek arrangements, as defined in subdivision (b). The Legislature finds further that legislation is necessary to provide redress of hardships resulting from these unanticipated delays by the enactment of special commission review procedures that augment, and do not limit in any way, the rights and privileges of parties before the Industrial Welfare Commission under this chapter.

(b) For purposes of this section only, a "preexisting workweek arrangement" is defined as, and limited to, a workweek arrangement that existed before November 1980, and had to be modified or abandoned by an employer because the workweek arrangement did not qualify for any exemption provided by the Industrial Welfare Commission from its daily overtime requirements for collectively bargained arrangements, and did not otherwise comply with the daily overtime requirements of an applicable commission order.

(c) An employer who has had in operation an established preexisting workweek arrangement may, prior to July 1, 1985, file a verified petition with the commission for review and

modification of an applicable order and, upon filing this petition, shall simultaneously file a copy with the Labor Commissioner. Upon receipt of the petition by the Labor Commissioner a stay of enforcement of the applicable commission order as it would affect the workweek arrangement shall take effect. The Labor Commissioner may reject a petition that, on its face, cannot qualify as a preexisting workweek arrangement. Within three months of commencement of the stay the Labor Commissioner shall certify the preexisting workweek arrangement to the commission if, upon examination, the Labor Commissioner finds that all of the following conditions are met by the workweek arrangement:

(1) It was established by the petitioning employer and was in operation prior to November 1980.

(2) It had to be abandoned or modified by the employer because of noncompliance with the applicable order of the commission.

(3) It was established on a nondiscriminatory basis with the support of affected employees and it continues to have the support of two-thirds of the employees in the covered work group.

(4) It complied with all applicable standards of the commission, other than daily overtime requirements.

(5) It is found, after consultation with the Director of Industrial Relations when appropriate, not to be adverse to the health and welfare of affected employees.

In the course of examining a preexisting workweek arrangement and following certification, the Labor Commissioner shall not divert any of the resources of the Division of Labor Standards Enforcement for the purpose of investigating, prosecuting, or otherwise acting upon any alleged violations of the daily overtime provisions of an applicable commission order during any period in 1980 in which a court-issued stay of enforcement was in effect for these provisions; provided, the workweek arrangement involved was in operation during that period in good faith reliance by the employer upon the court-issued stay of enforcement and with the approval of two-thirds of the employer's affected employees.

(d) In the course of examining a petition for certification to the commission, the Labor Commissioner shall have access to all pertinent records of the petitioning employer and shall have the authority to converse with affected employees of the employer without the presence of management. Until the commission takes action on a petition, the Labor Commissioner shall retain the authority to withdraw a certification to the commission for cause.

(e) Upon receipt by the commission of the Labor Commissioner's certification of a preexisting workweek arrangement, the stay of enforcement shall continue as hereinafter provided beyond the three-month period for certification until modified or rescinded by the commission. The modification or rescission shall not be made without an appropriate hearing and findings regarding the applicable order. If the commission undertakes review of the applicable order, the stay of enforcement shall continue through the review process and until any resulting modification of the applicable order, in which case, the modified order shall become applicable to the preexisting workweek arrangement.

(Amended by Stats. 1984, Ch. 869, Sec. 1.)

1182.6. (a) No employer who continuously operates a manufacturing facility 24 hours a day for seven days a week, and who has had in operation an established preexisting workweek arrangement, as defined in subdivision (b), shall be in violation of this code or any applicable wage order of the commission by instituting, pursuant to an agreement voluntarily executed by the employer and at least two-thirds of the affected employees before the performance of the work, a regularly scheduled workweek that includes three working days of not more than 12 hours a day, or regularly scheduled workweeks that include three working days of not more than 12 hours a day one week and four working days of not more than 12 hours a day in the following week for an average workweek of 42 hours over a two-week period.

(b) For purposes of this section only, a "preexisting workweek arrangement" is defined as, and limited to, a workweek arrangement that existed before November 1980, and had to be modified or abandoned by an employer because the workweek arrangement did not qualify for any exemption provided by the Industrial Welfare Commission from its daily overtime requirements for collectively bargained arrangements, and did not otherwise comply with the daily overtime requirements of an applicable commission order.

(c) The agreement described in subdivision (a) shall be confirmed by an affirmative vote by secret ballot by at least two-thirds of the affected employees, and may be rescinded at any time by a two-thirds vote of the affected employees. A new vote on whether the agreement described in subdivision (a) shall be continued shall be held every three years, and an affirmative vote by at least two-thirds of the affected employees shall be necessary to continue the agreement.

(d) The employer shall not be required to pay premium wage rates to employees working a schedule described in subdivision (a) unless the employee is required or permitted to work more than 12 hours in any workday, more than the scheduled three or four days in any workweek, or more than 40 hours in any workweek.

(e) This section shall not apply to any employer who is now, or in the future becomes, a party to a collective-bargaining agreement covering employees who would otherwise be covered by this section.

(f) No employee working a schedule described in subdivision (a) shall be required to work more than four consecutive days within seven consecutive days.

(Amended by Stats. 2006, Ch. 538, Sec. 482. Effective January 1, 2007.)

1182.7. (a) The Legislature finds that the time permitted the Industrial Welfare Commission to consider petitions, including, but not limited to, daily overtime compensation petitions that are to be given priority attention by the commission pursuant to Section 20 of Chapter 1083 of the Statutes of 1980, has created unanticipated and unwarranted delays in the review and possible modification of applicable commission orders. The Legislature finds further that legislation is necessary to provide redress of hardships resulting from these delays by the enactment of special commission review procedures that augment, and do not limit in any way, the rights and privileges of parties before the Industrial Welfare Commission under this chapter.

(b) Notwithstanding any other provisions of this chapter to the contrary, if a labor organization or a trade association recognized in the health care industry files or has filed a petition with the commission that requests an amendment to an order of the commission that would directly regulate only the health care industry, the petitioner may request that the ordinary procedure established by this chapter for the review of petitions of this nature not be used and that the procedure specified in subdivisions (c) and (d) be followed instead. If the request is made by the petitioner, the commission shall be required to follow the procedure specified in subdivisions (c) and (d).

(c) Upon the filing of a request under subdivision (b), the procedure to revise an order of the commission provided in Sections 1178 to 1182, inclusive, shall be waived. In lieu of that

procedure, the commission shall propose the adoption of or may reject the petition, in whole or in part, without appointing a wage board. The commission shall act on the petition within 45 days of the date the petition is originally filed. If the commission rejects the petition, it shall state its reasons for rejection.

The commission shall thereafter conduct hearings on any proposal to adopt the petition in whole or in part in the manner specified in subdivision (c) of Section 1178.5 and publish the proposed action in the manner provided in Section 1181. However, the hearings shall be conducted within 90 days of the date the petition is originally filed.

(d) Not more than 30 days following the hearings specified in subdivision (c), the commission shall take final action with respect to its proposal. No later than 15 days following final action, notice of the action taken shall be given in the manner provided for in Sections 1182.1 and 1183. Any action adopting, amending, or repealing an order of the commission pursuant to this section shall take effect 60 days following the date of this notice.

(e) Notwithstanding any other provisions of this chapter, the commission shall not adopt, amend, or repeal a proposal which has been changed from that which has originally been made available to the public, unless the change is nonsubstantive in nature and the commission complies with the procedure specified in this subdivision.

If a substantive change is made to the original proposal after the close of the public hearing, the full text of the resulting change shall be noticed within five days and made available to the public for comments for at least 10 days before the commission adopts, amends, or repeals the regulation. No later than 10 days following the close of the public comment period, the commission shall take final action with respect to its modified proposal, and give notice of that action within 10 days in the manner provided in Sections 1182.1 and 1183. In no case shall any action adopting, amending, or repealing an order take effect more than 60 days following the close of the public comment period.

(Amended by Stats. 1987, Ch. 460, Sec. 1.)

1182.8. No employer shall be in violation of any provision of any applicable order of the Industrial Welfare Commission relating to credit or charges for lodging for charging, pursuant to a voluntary written agreement, a resident apartment manager up to two-thirds of the fair market rental value of the apartment supplied to the manager, if no credit for the apartment is used to meet the employer's minimum wage obligation to the manager.

(Added by Stats. 1982, Ch. 913, Sec. 1.)

1182.11. Notwithstanding any other provision of this part, on and after March 1, 1997, the minimum wage for all industries shall not be less than five dollars ($5.00) per hour; on and after March 1, 1998, the minimum wage for all industries shall not be less than five dollars and seventy-five cents ($5.75) per hour. The Industrial Welfare Commission shall, at a public meeting, adopt minimum wage orders consistent with this section without convening wage boards, which wage orders shall be final and conclusive for all purposes.

(Added November 5, 1996, by initiative Proposition 210, Sec. 2. Note: Prop. 210 is titled the Living Wage Act of 1996.)

1182.12. (a) Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars ($9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour.

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

(A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents ($10.50) per hour.

(B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars ($11) per hour.

(C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars ($12) per hour.

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars ($13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars ($14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars ($15) per hour.

(2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

(A) From January 1, 2018, to December 31, 2018, inclusive,—ten dollars and fifty cents ($10.50) per hour.

(B) From January 1, 2019, to December 31, 2019, inclusive,—eleven dollars ($11) per hour.

(C) From January 1, 2020, to December 31, 2020, inclusive,—twelve dollars ($12) per hour.

(D) From January 1, 2021, to December 31, 2021, inclusive,—thirteen dollars ($13) per hour.

(E) From January 1, 2022, to December 31, 2022, inclusive,—fourteen dollars ($14) per hour.

(F) From January 1, 2023, and until adjusted by subdivision (c)—fifteen dollars ($15) per hour.

(3) For purposes of this subdivision, "employer" means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, "employer" includes the state, political subdivisions of the state, and municipalities.

(4) Employees who are treated as employed by a single qualified taxpayer under subdivision (h) of Section 23626 of the Revenue and Taxation Code, as it read on the effective date of this section, shall be considered employees of that taxpayer for purposes of this subdivision.

(c) (1) Following the implementation of the minimum wage increase specified in subparagraph (F) of paragraph (2) of subdivision (b), on or before August 1 of that year, and on or before each August 1 thereafter, the Director of Finance shall calculate an adjusted minimum wage. The calculation shall increase the minimum wage by the lesser of 3.5 percent and the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W). The result shall be rounded to the nearest ten cents ($0.10). Each adjusted minimum wage increase calculated under this subdivision shall take effect on the following January 1.

(2) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W is negative, there shall be no increase or decrease in the minimum wage pursuant to this subdivision on the following January 1.

(3) (A) Notwithstanding the implementation timing described in paragraph (1) of this subdivision, if the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W exceeds 7 percent in the first year that the minimum wage specified in subparagraph (F) of paragraph (1) of subdivision (b) is implemented, the indexing provisions described in paragraph (1) of this subdivision shall be implemented immediately, such that the indexing will be effective on the following January 1.

(B) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W exceeds 7 percent in the first year that the minimum wage specified in subparagraph (F) of paragraph (1) of subdivision (b) is implemented, notwithstanding any other law, for employers with 25 or fewer employees the minimum wage shall be set equal to the minimum wage for employers with 26 or more employees, effective on the following January 1, and the minimum wage increase specified in subparagraph (F) of paragraph (2) of subdivision (b) shall be considered to have been implemented for purposes of this subdivision.

(d) (1) On or before July 28, 2017, and on or before every July 28 thereafter until the minimum wage is fifteen dollars ($15) per hour pursuant to paragraph (1) of subdivision (b), to ensure that economic conditions can support a minimum wage increase, the Director of Finance shall annually make a determination and certify to the Governor and the Legislature whether each of the following conditions is met:

(A) Total nonfarm employment for California, seasonally adjusted, decreased over the three-month period from April to June, inclusive, prior to the July 28 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in March, as reported by the Employment Development Department.

(B) Total nonfarm employment for California, seasonally adjusted, decreased over the six-month period from January to June, inclusive, prior to the July 28 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in December, as reported by the Employment Development Department.

(C) Retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending one month prior to the July 28 determination is less than retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending 13 months prior to the July 28 determination. The calculation for the condition specified in this subparagraph shall be made as follows:

(i) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the total retail sales (sales before adjustments) for the prior month derived from their daily retail sales and use tax reports.

(ii) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the monthly factor required to convert the prior month's retail sales and use tax total from all tax rates to a retail sales and use tax total from a 3.9375-percent tax rate.

(iii) The Department of Finance shall multiply the monthly total from clause (i) by the monthly factor from clause (ii) for each month.

(iv) The Department of Finance shall sum the monthly totals calculated in clause (iii) to calculate the 12-month July 1 to June 30, inclusive, totals needed for the comparison in this subparagraph.

(2) (A) On or before July 28, 2017, and on or before every July 28 thereafter until the minimum wage is fifteen dollars ($15) per hour pursuant to paragraph (1) of subdivision (b), to ensure that the state General Fund fiscal condition can support the next scheduled minimum wage increase, the Director of Finance shall annually make a determination and certify to the Governor and the Legislature whether the state General Fund would be in a deficit in the current fiscal year, or in either of the following two fiscal years.

(B) For purposes of this subdivision, deficit is defined as a negative balance in the Special Fund for Economic Uncertainties, as provided for in Section 16418 of the Government Code, that exceeds, in absolute value, 1 percent of total state General Fund revenue and transfers, based on the most recent Department of Finance estimates required by Section 12.5 of Article IV of the California Constitution. For purposes of this subdivision, the estimates shall include the assumption that only the minimum wage increases scheduled for the following calendar year pursuant to subdivision (b) will be implemented.

(3) (A) (i) If, for any year, the condition in either subparagraph (A) or (B) of paragraph (1) is met, and if the condition in subparagraph (C) of paragraph (1) is met, the Governor may, on or before August 1 of that year, notify the Legislature of an initial determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year.

(ii) If the Director of Finance certifies under paragraph (2) that the state General Fund would be in a deficit in the current fiscal year, or in either of the following two fiscal years, the Governor may, on or before August 1 of that fiscal year, notify the Legislature of an initial determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year.

(B) If the Governor provides notice to the Legislature pursuant to subparagraph (A), the Governor shall, on September 1 of any such year, make a final determination whether to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year. The determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year shall be made by proclamation.

(C) The Governor may temporarily suspend scheduled minimum wage increases pursuant to clause (ii) of subparagraph (A) no more than two times.

(D) If the Governor makes a final determination to temporarily suspend the scheduled minimum wage increases pursuant to subdivision (b) for the following year, all dates specified in subdivision (b) that are subsequent to the September 1 final determination date shall be postponed by an additional year.

(Amended by Stats. 2016, Ch. 4, Sec. 3. Effective January 1, 2017.)

1182.13. (a) The Department of Industrial Relations shall adjust upwards the permissible meals and lodging credits by the same percentage as the increase in the minimum wage made pursuant to Section 1182.12.

(b) The Department of Industrial Relations shall amend and republish the Industrial Welfare Commission's wage orders to be consistent with this section and Section 1182.12. The department shall make no other changes to the wage orders of the Industrial Welfare Commission that are in existence on the effective date

of this section. The department shall meet the requirements set forth in Section 1183.

(c) Every employer that is subject to an amended republished order under this section shall post a copy of the order and keep it posted in a conspicuous location frequented by employees during the hours of the workday as required by Section 1183.

(d) Wage orders that are amended and republished as required under this section shall be final and conclusive for all purposes and dispositive of all pending petitions before the Industrial Welfare Commission as of the effective date of the act adding this section. Any amendment and republication pursuant to this section shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), and from the procedures set forth in Sections 1177, 1178.5, 1181, 1182, and 1182.1.

(Added by Stats. 2006, Ch. 230, Sec. 2. Effective January 1, 2007.)

1183. (a) So far as practicable, the commission, by mail, shall send a copy of the order authorized by Section 1182 to each employer in the occupation or industry in question, and each employer shall post a copy of the order in the building in which employees affected by the order are employed. The commission shall also send a copy of the order to each employer registering his or her name with the commission for that purpose, but failure to mail the order or notice of the order to any employer affected by the order shall not relieve the employer from the duty of complying with the order.

(b) The commission shall prepare a summary of the regulations contained in its orders. The summary shall be printed on the first page of the document containing the full text of the order. The summary shall include a brief description of the following subjects of the orders: minimum wage, hours and days of work, reporting time, pay records, cash shortages and breakage, uniforms and equipment, meals and lodging, meal and rest periods, and seats. The summary shall also include information as to how to contact the field office of the Division of Labor Standards Enforcement, how to obtain a copy of the full text of the order and the statement as to the basis for the order, and any other information the commission deems necessary. The commission, at its discretion, may prepare a separate summary for each order or any combination of orders, or it may incorporate the regulations of all its orders into a single summary.

(c) A finding by the commission that there has been publication of any action taken by the commission as required by Section 1182.1 is conclusive as to the obligation of an employer to comply with the order.

(d) Every employer who is subject to an order of the commission shall post a copy of the order and keep it posted in a conspicuous location frequented by employees during the hours of the workday.

(Repealed and added by Stats. 1998, Ch. 150, Sec. 4. Effective January 1, 1999.)

1184. Any action taken by the commission pursuant to Section 1182 shall be effective on the first day of the succeeding January or July and not less than 60 days from the date of publication pursuant to Section 1182.1.

(Amended by Stats. 1998, Ch. 150, Sec. 5. Effective January 1, 1999.)

1185. The orders of the commission fixing minimum wages, maximum hours, and standard conditions of labor for all employees, when promulgated in accordance with the provisions of this chapter, shall be valid and operative and such orders are hereby expressly exempted from the provisions of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1980, Ch. 676.)

1186. A person employed in the practice of pharmacy is not exempt from coverage under any provision of the orders of the Industrial Welfare Commission unless he or she individually meets the criteria established for exemption as executive or administrative employees. No person employed in the practice of pharmacy may be subject to any exemption from coverage under the orders of the Industrial Welfare Commission established for professional employees.

(Added by Stats. 1999, Ch. 190, Sec. 2. Effective January 1, 2000.)

1186.5. Notwithstanding any other provision of law, pharmacists engaged in the practice of pharmacy who are employed in the mercantile industry, as defined by Wage Order 7 of the Industrial Welfare Commission, shall be permitted to adopt alternative workweek schedules allowed by the provisions of Wage Order 4, including the provisions for alternative workweeks that can be adopted by employees working in the health care industry.

(Added by Stats. 2007, Ch. 480, Sec. 1. Effective January 1, 2008.)

1187. The findings of fact made by the commission are, in the absence of fraud, conclusive.

(Enacted by Stats. 1937, Ch. 90.)

1188. Any person aggrieved directly or indirectly by any final rule or regulation of the commission made under this chapter may apply to the commission for a rehearing in respect to any matters determined or covered therein and specified in the application for rehearing within twenty days after the publication thereof. The application for rehearing shall be verified and shall state fully the grounds upon which the application for rehearing is based. The commission upon considering an application for rehearing may grant the same by order and notice thereof given by mail to the party applying for the rehearing, and fix a time for the rehearing and reconsider its order, rule, or regulation. The commission may redetermine the matter upon the record before it and give notice of its redetermination in the same manner as provided for service of an original order, rule, or regulation. The commission may deny such rehearing upon the record before it, giving notice of its decision by mail to the applicant therefor. Such rehearing is deemed to be denied unless acted upon by the commission within thirty days after being filed.

(Enacted by Stats. 1937, Ch. 90.)

1190. Nothing in this chapter shall prevent a review or other action permitted by the Constitution and laws of this State by a court of competent jurisdiction with reference to any order, rule, or regulation of the commission under this chapter.

(Enacted by Stats. 1937, Ch. 90.)

1191. For any occupation in which a minimum wage has been established, the commission may issue to an employee who is mentally or physically handicapped, or both, a special license authorizing the employment of the licensee for a period not to exceed one year from date of issue, at a wage less than the legal minimum wage. The commission shall fix a special minimum wage for the licensee. Such license may be renewed on a yearly basis.

(Amended by Stats. 1972, Ch. 1122.)

1191.5. Notwithstanding the provisions of Section 1191, the commission may issue a special license to a nonprofit organization such as a sheltered workshop or rehabilitation facility to permit the employment of employees who have been determined by the commission to meet the requirements in Section 1191 without requiring individual licenses of such employees. The commission

shall fix a special minimum wage for such employees. The special license for the nonprofit corporation shall be renewed on a yearly basis, or more frequently as determined by the commission.

(Amended by Stats. 1973, Ch. 1007.)

1192. For any occupation in which a minimum wage has been established, the commission may issue to an apprentice or learner a special license authorizing the employment of such apprentice or learner for the time and under the conditions which the commission determines and at a wage less than the legal minimum wage. The commission shall fix a special wage for such apprentice or learner.

(Enacted by Stats. 1937, Ch. 90.)

1193. The commission may fix the maximum number of employees to be employed under the licenses provided for in Sections 1191 and 1192 in any occupation, trade, industry, or establishment in which a minimum wage has been established.

(Amended by Stats. 1972, Ch. 1122.)

1193.5. The provisions of this chapter shall be administered and enforced by the division. Any authorized representative of the division shall have authority to:

(a) Investigate and ascertain the wages of all employees, and the hours and working conditions of all employees employed in any occupation in the state;

(b) Supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee under the provisions of this chapter or the orders of the commission. Acceptance of payment of sums found to be due on demand of the division shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194.

Unpaid minimum wages or unpaid overtime wages recovered by the division under the provisions of this section which for any reason cannot be delivered within six months from date of collection to the employee for whom such wages were collected shall be deposited into the Industrial Relations Unpaid Wage Fund in the State Treasury.

(Amended by Stats. 1980, Ch. 1083.)

1193.6. (a) The department or division may, with or without the consent of the employee or employees affected, commence and prosecute a civil action to recover unpaid minimum wages or unpaid overtime compensation, including interest thereon, owing to any employee under this chapter or the orders of the commission, and, in addition to these wages, compensation, and interest, shall be awarded reasonable attorney's fees, and costs of suit. The consent of any employee to the bringing of this action shall constitute a waiver on the part of the employee of his or her cause of action under Section 1194 unless the action is dismissed without prejudice by the department or the division.

(b) The amendments made to this section by Chapter 825 of the Statutes of 1991 shall apply only to civil actions commenced on or after January 1, 1992.

(Amended by Stats. 1992, Ch. 427, Sec. 119. Effective January 1, 1993.)

1194. (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

(b) The amendments made to this section by Chapter 825 of the Statutes of 1991 shall apply only to civil actions commenced on or after January 1, 1992.

(Amended by Stats. 1992, Ch. 427, Sec. 120. Effective January 1, 1993.)

1194.2. (a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.

(b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

(c) This section applies only to civil actions commenced on or after January 1, 1992.

(Amended by Stats. 2014, Ch. 211, Sec. 1. Effective January 1, 2015.)

1194.3. An employee may recover attorney's fees and costs incurred to enforce a court judgment for unpaid wages due pursuant to this code.

(Added by Stats. 2011, Ch. 655, Sec. 8. Effective January 1, 2012.)

1194.5. In any case in which a person employing an employee has willfully violated any of the laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person.

(Amended by Stats. 1972, Ch. 1122.)

1195. Any person may register with the Division of Labor Standards Enforcement a complaint that the wage paid to an employee for whom a minimum wage has been fixed by the commission is less than that rate. The division shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the minimum wage.

(Amended by Stats. 1979, Ch. 373.)

1195.5. The Division of Labor Standards Enforcement shall determine, upon request, whether the wages of employees, which exceed the minimum wages fixed by the commission, have been correctly computed and paid. For this purpose, the division may examine the books, reports, contracts, payrolls and other documents of the employer relative to the employment of employees. The division shall enforce the payment of any sums found, upon examination, to be due and unpaid to the employees.

(Amended by Stats. 1976, Ch. 1184.)

1197. The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

(Amended by Stats. 2015, Ch. 783, Sec. 2. Effective January 1, 2016.)

1197.1. (a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order

of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has paid or caused to be paid a wage less than the minimum under applicable law, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated. The Labor Commissioner shall promptly take all appropriate action, in accordance with this section, to enforce the citation and to recover the civil penalty assessed, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 in connection with the citation.

(c) (1) If a person desires to contest a citation or the proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 therefor, the person shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner that appears on the citation of his or her appeal by a request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 shall be affirmed, modified, or dismissed.

(2) The decision of the Labor Commissioner shall consist of a notice of findings, findings, and an order, all of which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court. The party shall pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(3) As a condition to filing a petition for a writ of mandate, the petitioner seeking the writ shall first post a bond with the Labor Commissioner equal to the total amount of any minimum wages, liquidated damages, and overtime compensation that are due and owing as determined pursuant to subdivision (b) of Section 558, as specified in the citation being challenged. The bond amount shall not include amounts for penalties. The bond shall be issued by a surety duly authorized to do business in this state, shall be issued in favor of unpaid employees, and shall ensure that the petitioner makes payments as set forth in this paragraph. If a decision is entered which affirms or modifies the amounts for minimum wages, liquidated damages, or overtime compensation, the petitioner shall pay the amounts owed for the specified items included in a clerk's judgment entered under subdivision (f) based on the decision, or pursuant to a court judgment in a writ of mandate proceeding under paragraph (2). If the request for a writ is withdrawn or dismissed without entry of judgment, the petitioner shall pay the amounts owed for the specified items pursuant to the citation, or the administrative decision if a pending writ of mandate is dismissed prior to a court decision, unless the parties have executed a settlement agreement for payment of some other amount. In the case of a settlement agreement, the petitioner shall pay the amount he or she is obligated to pay under the terms of the settlement.

(4) If the employer fails to pay the amount of minimum wages, liquidated damages, or overtime compensation owed within 10 days of the entry of judgment, dismissal or withdrawal of writ, or the execution of a settlement agreement, a portion of the undertaking, described in paragraph (3), equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, shall be forfeited to the employee.

(d) A person to whom a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(e) When no petition objecting to a citation or the proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 is filed, a certified copy of the citation or proposed civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203.

(f) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty, wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203 after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(g) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk

shall make no charge for the service provided by this section to be performed by him or her.

(h) In a jurisdiction where a local entity has the legal authority to issue a citation against an employer for a violation of any applicable local minimum wage law, the Labor Commissioner, pursuant to a request from the local entity, may issue a citation against an employer for a violation of any applicable local minimum wage law if the local entity has not cited the employer for the same violation. If the Labor Commissioner issues a citation, the local entity shall not cite the employer for the same violation.

(i) The civil penalties provided for in this section are in addition to any other penalty provided by law.

(j) This section shall not apply to any order of the commission relating to household occupations.

(k) This section does not change the applicability of local minimum wage laws to any entity.

(Amended by Stats. 2016, Ch. 622, Sec. 1. Effective January 1, 2017.)

1197.2. (a) In addition to any other penalty imposed by law, an employer who willfully fails to pay and has the ability to pay a final court judgment or final order issued by the Labor Commissioner for all wages due to an employee who has been discharged or who has quit within 90 days of the date that the judgment was entered or the order became final is guilty of a misdemeanor. For purposes of this section, "final court judgment or final order" means a court judgment or order as to which the time to appeal has expired and there is no appeal pending. If the total amount of wages due is one thousand dollars ($1,000) or less, upon conviction therefor, the employer shall be fined not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or imprisoned in a county jail for not more than six months, for each offense. If the total amount of wages due is more than one thousand dollars ($1,000) upon conviction therefor, the employer shall be fined not less than ten thousand dollars ($10,000) nor more than twenty thousand dollars ($20,000), or imprisoned in a county jail for not less than six months, nor more than one year, or both the fine and imprisonment, for each offense. If there are multiple failures to pay wages involving more than one employee, the total amount of wages due to all employees shall be aggregated together for purposes of determining the level of fine and the term of imprisonment.

(b) As used in this section, "willfully" has the same meaning as provided in Section 7 of the Penal Code.

(c) Nothing in this section precludes prosecution under any other provision of law.

(Amended by Stats. 2012, Ch. 867, Sec. 13. Effective January 1, 2013.)

1197.5. (a) An employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates:

(1) The wage differential is based upon one or more of the following factors:

(A) A seniority system.

(B) A merit system.

(C) A system that measures earnings by quantity or quality of production.

(D) A bona fide factor other than sex, such as education, training, or experience. This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity. For purposes of this subparagraph, "business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

(2) Each factor relied upon is applied reasonably.

(3) The one or more factors relied upon account for the entire wage differential. Prior salary shall not, by itself, justify any disparity in compensation.

(b) An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates:

(1) The wage differential is based upon one or more of the following factors:

(A) A seniority system.

(B) A merit system.

(C) A system that measures earnings by quantity or quality of production.

(D) A bona fide factor other than race or ethnicity, such as education, training, or experience. This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a race- or ethnicity-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity. For purposes of this subparagraph, "business necessity" means an overriding legitimate business purpose such that the factor relied upon effectively fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential.

(2) Each factor relied upon is applied reasonably.

(3) The one or more factors relied upon account for the entire wage differential. Prior salary shall not, by itself, justify any disparity in compensation.

(c) Any employer who violates subdivision (a) or (b) is liable to the employee affected in the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and an additional equal amount as liquidated damages.

(d) The Division of Labor Standards Enforcement shall administer and enforce this section. If the division finds that an employer has violated this section, it may supervise the payment of wages and interest found to be due and unpaid to employees under subdivision (a) or (b). Acceptance of payment in full made by an employer and approved by the division shall constitute a waiver on the part of the employee of the employee's cause of action under subdivision (h).

(e) Every employer shall maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer. All of the records shall be kept on file for a period of three years.

(f) Any employee may file a complaint with the division that the wages paid are less than the wages to which the employee is entitled under subdivision (a) or (b) or that the employer is in violation of subdivision (k). The complaint shall be investigated as provided in subdivision (b) of Section 98.7. The division shall keep confidential the name of any employee who submits to the division a complaint regarding an alleged violation of subdivision

(a), (b), or (k) until the division establishes the validity of the complaint, unless the division must abridge confidentiality to investigate the complaint. The name of the complaining employee shall remain confidential if the complaint is withdrawn before the confidentiality is abridged by the division. The division shall take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to these employees.

(g) The department or division may commence and prosecute, unless otherwise requested by the employee or affected group of employees, a civil action on behalf of the employee and on behalf of a similarly affected group of employees to recover unpaid wages and liquidated damages under subdivision (a) or (b), and in addition shall be entitled to recover costs of suit. The consent of any employee to the bringing of any action shall constitute a waiver on the part of the employee of the employee's cause of action under subdivision (h) unless the action is dismissed without prejudice by the department or the division, except that the employee may intervene in the suit or may initiate independent action if the suit has not been determined within 180 days from the date of the filing of the complaint.

(h) An employee receiving less than the wage to which the employee is entitled under this section may recover in a civil action the balance of the wages, including interest thereon, and an equal amount as liquidated damages, together with the costs of the suit and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.

(i) A civil action to recover wages under subdivision (a) or (b) may be commenced no later than two years after the cause of action occurs, except that a cause of action arising out of a willful violation may be commenced no later than three years after the cause of action occurs.

(j) If an employee recovers amounts due the employee under subdivision (c), and also files a complaint or brings an action under subdivision (d) of Section 206 of Title 29 of the United States Code which results in an additional recovery under federal law for the same violation, the employee shall return to the employer the amounts recovered under subdivision (c), or the amounts recovered under federal law, whichever is less.

(k) (1) An employer shall not discharge, or in any manner discriminate or retaliate against, any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this section. An employer shall not prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this section. Nothing in this section creates an obligation to disclose wages.

(2) Any employee who has been discharged, discriminated or retaliated against, in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this section may recover in a civil action reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, including interest thereon, as well as appropriate equitable relief.

(3) A civil action brought under this subdivision may be commenced no later than one year after the cause of action occurs.

(Amended by Stats. 2016, Ch. 866, Sec. 1.5. Effective January 1, 2017.)

1198. The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

(Amended by Stats. 1973, Ch. 1007.)

1198.3. (a) The Chief of the Division of Labor Standards Enforcement may, when in his or her judgment hardship will result, exempt any employer or employees from any mandatory day or days off requirement contained in any order of the commission. Any exemption granted by the chief pursuant to this section shall be only of sufficient duration to permit the employer or employees to comply with the requirements contained in the order of the commission, but not more than one year. The exemption may be renewed by the chief only after he or she has investigated and is satisfied that a good faith effort is being made to comply with the order of the commission.

(b) No employer shall discharge or in any other manner discriminate against any employee who refuses to work hours in excess of those permitted by the order of the commission.

(Amended by Stats. 1985, Ch. 620, Sec. 1.)

1198.4. Upon request, the Chief of the Division of Labor Standards Enforcement shall make available to the public any enforcement policy statements or interpretations of orders of the Industrial Welfare Commission. Copies of such policy statements shall be furnished to the Industrial Welfare Commission.

(Added by Stats. 1980, Ch. 1083.)

1198.5. (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

(2) (A) For purposes of this section, a request to inspect or receive a copy of personnel records shall be made in either of the following ways:

(i) Written and submitted by the current or former employee or his or her representative.

(ii) Written and submitted by the current or former employee or his or her representative by completing an employer-provided form.

(B) An employer-provided form shall be made available to the employee or his or her representative upon verbal request to

the employee's supervisor or, if known to the employee or his or her representative at the time of the request, to the individual the employer designates under this section to receive a verbal request for the form.

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment.

(2) With regard to current employees, make a current employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the place where the employee reports to work, or at another location agreeable to the employer and the requester. If the employee is required to inspect or receive a copy at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted.

(3) (A) With regard to former employees, make a former employee's personnel records available for inspection, and, if requested by the employee or his or her representative, provide a copy thereof, at the location where the employer stores the records, unless the parties mutually agree in writing to a different location. A former employee may receive a copy by mail if he or she reimburses the employer for actual postal expenses.

(B) (i) Notwithstanding subparagraph (A), if a former employee seeking to inspect his or her personnel records was terminated for a violation of law, or an employment-related policy, involving harassment or workplace violence, the employer may comply with the request by doing one of the following:

(I) Making the personnel records available to the former employee for inspection at a location other than the workplace that is within a reasonable driving distance of the former employee's residence.

(II) Providing a copy of the personnel records by mail.

(ii) Nothing in this subparagraph shall limit a former employee's right to receive a copy of his or her personnel records.

(d) An employer is required to comply with only one request per year by a former employee to inspect or receive a copy of his or her personnel records.

(e) The employer may take reasonable steps to verify the identity of a current or former employee or his or her authorized representative. For purposes of this section, "representative" means a person authorized in writing by the employee to inspect, or receive a copy of, his or her personnel records.

(f) The employer may designate the person to whom a request is made.

(g) Prior to making records specified in subdivision (a) available for inspection or providing a copy of those records, the employer may redact the name of any nonsupervisory employee contained therein.

(h) The requirements of this section do not apply to:

(1) Records relating to the investigation of a possible criminal offense.

(2) Letters of reference.

(3) Ratings, reports, or records that were:

(A) Obtained prior to the employee's employment.

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights (Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code).

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(i) If a public agency has established an independent employee relations board or commission, an employee shall first seek relief regarding any matter or dispute relating to this section from that board or commission before pursuing any available judicial remedy.

(j) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection and the receipt of a copy of personnel records by employees. Nothing in this section shall be construed to prevent the establishment of additional rules for the inspection and the receipt of a copy of personnel records that are established as the result of agreements between an employer and a recognized employee organization.

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars ($750) from the employer.

(l) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

(m) Notwithstanding Section 1199, a violation of this section is an infraction. Impossibility of performance, not caused by or resulting from a violation of law, may be asserted as an affirmative defense by an employer in any action alleging a violation of this section.

(n) If an employee or former employee files a lawsuit that relates to a personnel matter against his or her employer or former employer, the right of the employee, former employee, or his or her representative to inspect or copy personnel records under this section ceases during the pendency of the lawsuit in the court with original jurisdiction.

(o) For purposes of this section, a lawsuit "relates to a personnel matter" if a current or former employee's personnel records are relevant to the lawsuit.

(p) An employer is not required to comply with more than 50 requests under this section to inspect and receive a copy of personnel records filed by a representative or representatives of employees in one calendar month.

(q) This section does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for all of the following:

(1) The wages, hours of work, and working conditions of employees.

(2) A procedure for the inspection and copying of personnel records.

(3) Premium wage rates for all overtime hours worked.

(4) A regular rate of pay of not less than 30 percent more than the state minimum wage rate.

(Amended by Stats. 2012, Ch. 842, Sec. 2. Effective January 1, 2013.)

1199. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

(Amended by Stats. 1983, Ch. 1092, Sec. 205. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1199.5. Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment for not more than six months, or by both, who willfully does any of the following:

(a) Pays or causes to be paid any employee a wage less than the rate paid to an employee of another sex, race, or ethnicity, as required by Section 1197.5.

(b) Reduces the wages of any employee in order to comply with Section 1197.5.

No person shall be imprisoned pursuant to this section except for an offense committed after the conviction of the person for a prior offense pursuant to this section.

(Amended by Stats. 2016, Ch. 866, Sec. 2. Effective January 1, 2017.)

1200. In every prosecution for violation of any provision of this chapter, the minimum wage, the maximum hours of work, and the standard conditions of labor fixed by the commission shall be presumed to be reasonable and lawful.

(Enacted by Stats. 1937, Ch. 90.)

1201. The commission shall not act as a board of arbitration during a strike or lockout.

(Enacted by Stats. 1937, Ch. 90.)

1202. Upon the request of the commission, the department shall cause such statistics and other data and information to be gathered, and investigations made, as the commission may require. The cost thereof shall be paid out of the appropriations made for the expenses of the commission.

(Amended by Stats. 2012, Ch. 46, Sec. 92. Effective June 27, 2012.)

1203. The commission may publish and distribute from time to time reports and bulletins covering its operations and proceedings under this chapter and such other matters relative thereto which it deems advisable.

(Enacted by Stats. 1937, Ch. 90.)

1204. No order made by the commission under the provisions of Sections 1182 or 1184 of this chapter shall be effective unless and until compliance is had with the provisions of Section 1178 of this code.

(Amended by Stats. 1953, Ch. 208.)

1205. (a) As used in this section:

(1) "Local jurisdiction" means any city, county, district, or agency, or any subdivision or combination thereof.

(2) "State agency" means any state office, officer, department, division, bureau, board, commission, or agency, or any subdivision thereof.

(3) "Labor standards" means any legal requirements regarding wages paid, hours worked, and other conditions of employment.

(b) Nothing in this part shall be deemed to restrict the exercise of local police powers in a more stringent manner.

(c) When a local jurisdiction expends funds that have been provided to it by a state agency, operates a program that has received assistance from a state agency, or engages in an activity that has received assistance from a state agency, labor standards established by the local jurisdiction through exercise of local police powers or spending powers shall take effect with regard to that expenditure, program, or activity, so long as those labor standards are not in explicit conflict with, or explicitly preempted by, state law. A state agency may not require as a condition to the receipt of state funds or assistance that a local jurisdiction refrain from applying labor standards established by the local jurisdiction to expenditures, programs, or activities supported by the state funds or assistance in question.

(Amended by Stats. 2002, Ch. 298, Sec. 1. Effective January 1, 2003.)

1206. Notwithstanding any other provision of law, this code establishes minimum penalties for failure to comply with wage-related statutes and regulations.

(Added by Stats. 2011, Ch. 655, Sec. 11. Effective January 1, 2012.)

Chapter 2. Occupational Privileges and Restrictions

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

Article 2. Minors

(Article 2 enacted by Stats. 1937, Ch. 90.)

1285. It is the intent of the Legislature in enacting Sections 1286 to 1289, inclusive, to establish a citation system for the imposition of prompt and effective civil sanctions against violators of the laws and regulations of this state relating to the employment of minors. The civil penalties provided for in this article are in addition to any other penalty provided by law.

(Added by Stats. 1975, Ch. 144.)

1286. As used in this article:

(a) "Director" means the Director of Industrial Relations or his or her designee.

(b) "Department" means the Department of Industrial Relations.

(c) "Minor" means any person under the age of 18 years who is required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code and any person under the age of six years. A person under the age of 18 years who is not required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code solely because that person is a nonresident of California shall still be considered a minor.

(d) "Labor Commissioner" means the Chief of the Division of Labor Law Enforcement, his or her deputies or agents, who shall have the authority to conduct informal hearings and determine the amount of civil penalties in accordance with this article.

(e) "Door-to-door sales" has the same meaning as "home solicitation contract or offer," as defined in subdivision (a) of Section 1689.5 of the Civil Code, except that "door-to-door sales" is not subject to the minimum monetary limitation set forth in that subdivision.

(Amended by Stats. 1995, Ch. 887, Sec. 2. Effective January 1, 1996.)

1287. If upon inspection or investigation the director determines that a person is in violation of any statutory provision or rule or regulation relating to the employment of minors, he may issue a citation to the person in violation. The citation may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provisions, rule, or regulation alleged to have been violated.

(Added by Stats. 1975, Ch. 144.)

1288. Citations issued pursuant to this article shall be classified according to the nature of the violation, and shall indicate the classification on the face thereof, as follows:

(a) Class "A" violations are violations of Section 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1308, 1308.1, or 1392, and any other violations that the director determines present an imminent danger to minor employees or a substantial probability that death or serious physical harm would result therefrom. The violation of Section 1391 for the third or subsequent time shall also constitute a class "A" violation. A physical condition or one or more practices, means, methods, or operations in use in a place of employment may constitute a violation. A class "A" violation is subject to a civil penalty in an amount not less than five thousand dollars ($5,000) and not exceeding ten thousand dollars ($10,000) for each and every violation. Willful or repeated violations shall receive higher civil penalties than those imposed for comparable nonwillful or first violations, not to exceed ten thousand dollars ($10,000).

(b) Class "B" violations are violations of Section 1299 or 1308.5, or a violation of Section 1391 for the first and second time, and those other violations that the director determines have a direct or immediate relationship to the health, safety, or security of minor employees, other than class "A" violations. A class "B" violation is subject to a civil penalty in an amount not less than five hundred dollars ($500) and not to exceed one thousand dollars ($1,000) for each and every violation. Willful or repeated violations shall receive higher civil penalties than those imposed for comparable nonwillful or first violations. A second violation of Section 1391 shall be subject to a civil penalty of one thousand dollars ($1,000).

(c) Nothing in this section shall preclude the imposition of criminal penalties provided for in this chapter.

(Amended by Stats. 1995, Ch. 887, Sec. 3. Effective January 1, 1996.)

1289. (a) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, he or she shall within 15 business days after service of the citation notify the office of the Labor Commissioner that appears on the citation of his or her request for an informal hearing. The Labor Commissioner or the commissioner's deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order that shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from that finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(b) A person to whom a citation has been issued, shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(c) When no petition objecting to a citation or the proposed assessment of a civil penalty is filed, a certified copy of the citation or proposed civil penalty may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty.

(d) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty after hearing, a certified copy of the findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(Amended by Stats. 2006, Ch. 538, Sec. 483. Effective January 1, 2007.)

1290. No minor under the age of 16 years shall be employed, permitted, or suffered to work in or in connection with any manufacturing establishment or other place of labor or employment at any time except as may be provided in this article or by the provisions of Part 27 (commencing with Section 48000) of the Education Code.

(Amended by Stats. 1980, Ch. 676.)

1291. Work is done for a manufacturing establishment within the meaning of this article whenever it is done at any place upon the work of a manufacturing establishment, or upon any of the materials entering into the products of a manufacturing establishment, whether under contract or arrangement with any person in charge of or connected with a manufacturing establishment directly or indirectly through contractors or third persons.

(Enacted by Stats. 1937, Ch. 90.)

1292. No minor under the age of sixteen years shall be employed or permitted to work in any capacity in:

(a) Adjusting any belt to any machinery.

(b) Sewing or lacing machine belts in any workshop or factory.

(c) Oiling, wiping, or cleaning machinery, or assisting therein.

(Enacted by Stats. 1937, Ch. 90.)

1293. No minor under the age of sixteen years shall be employed, or permitted, to work in any capacity in operating or assisting in operating any of the following machines:

(a) Circular or band saws; wood shapers; wood-jointers; planers; sandpaper or wood-polishing machinery; wood turning or boring machinery.

(b) Picker machines or machines used in picking wool, cotton, hair, or other material; carding machines; leather-burnishing machines; laundry machinery.

(c) Printing-presses of all kinds; boring or drill presses; stamping machines used in sheet-metal and tinware, in paper and leather manufacturing, or in washer and nut factories; metal or paper-cutting machines; paper-lace machines.

(d) Corner-staying machines in paper-box factories; corrugating rolls, such as are used in corrugated paper, roofing or washboard factories.

(e) Dough brakes or cracker machinery of any description.

(f) Wire or iron straightening or drawing machinery; rolling-mill machinery; power punches or shears; washing, grinding

or mixing machinery; calendar rolls in paper and rubber manufacturing; steam-boilers; in proximity to any hazardous or unguarded belts, machinery or gearing.

(Enacted by Stats. 1937, Ch. 90.)

1293.1. (a) Except as provided in subdivision (c) of Section 1394, no minor under the age of 12 years may be employed or permitted to work, or accompany or be permitted to accompany an employed parent or guardian, in an agricultural zone of danger. As used in this section, "agricultural zone of danger" means any or all of the following:

(1) On or about moving equipment.

(2) In or about unprotected chemicals.

(3) In or about any unprotected water hazard.

The Department of Industrial Relations may, after hearing, determine other hazards that constitute an agricultural zone of danger.

(b) Except for employment described in subdivision (a) of Section 1394, no minor under the age of 12 years may be employed or permitted to work, or accompany an employed parent or guardian, in any of the occupations declared hazardous for employment of minors below 16 years of age in Section 570.71 of Title 29 of the Code of Federal Regulations, as that regulation may be amended from time to time.

(Amended by Stats. 1994, Ch. 1175, Sec. 7. Effective January 1, 1995.)

1294. No minor under the age of 16 years shall be employed or permitted to work in any capacity:

(a) Upon any railroad, whether steam, electric, or hydraulic.

(b) Upon any vessel or boat engaged in navigation or commerce within the jurisdiction of this state.

(c) In, about, or in connection with any processes in which dangerous or poisonous acids are used, in the manufacture or packing of paints, colors, white or red lead, or in soldering.

(d) In occupations causing dust in injurious quantities, in the manufacture or use of dangerous or poisonous dyes, in the manufacture or preparation of compositions with dangerous or poisonous gases, or in the manufacture or use of compositions of lye in which the quantity thereof is injurious to health.

(e) On scaffolding, in heavy work in the building trades, in any tunnel or excavation, or in, about or in connection with any mine, coal breaker, coke oven or quarry.

(f) In assorting, manufacturing or packing tobacco.

(g) Operating any automobile, motorcar, or truck.

(h) In any occupation dangerous to the life or limb, or injurious to the health or morals of the minor.

(Amended by Stats. 1994, Ch. 1175, Sec. 8. Effective January 1, 1995.)

1294.1. (a) No minor under the age of 16 years shall be employed or permitted to work in either of the following:

(1) Any occupation declared particularly hazardous for the employment of minors below the age of 16 years in Section 570.71 of Subpart E-1 of Part 570 of Title 29 of the Code of Federal Regulations, as that regulation may be revised from time to time.

(2) Any occupation excluded from the application of Subpart C of Part 570 of Title 29 of the Code of Federal Regulations, as set forth in Section 570.33 and paragraph (b) of Section 570.34 thereof, as those regulations may be revised from time to time.

(b) No minor shall be employed or permitted to work in any occupation declared particularly hazardous for the employment of minors between 16 and 18 years of age, or declared detrimental to their health or well-being, in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations, as those regulations may be revised from time to time.

(c) Nothing in this section shall prohibit a minor engaged in the processing and delivery of newspapers from entering areas of a newspaper plant, other than areas where printing presses are located, for purposes related to the processing or delivery of newspapers.

(Amended by Stats. 1995, Ch. 887, Sec. 4. Effective January 1, 1996.)

1294.3. Minors 14 and 15 years of age may be employed in occupations not otherwise prohibited by this chapter, including, but not limited to, the following:

(a) Office and clerical work, including the operation of office machines.

(b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.

(c) Price marking and tagging by hand or by machine, assembling orders, packing and shelving.

(d) Bagging and carrying out customers' orders.

(e) Errand and delivery work by foot, bicycle, and public transportation.

(f) Cleanup work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers or cutters.

(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of this work, including, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milkshake blenders, and coffee grinders.

(h) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

(Amended by Stats. 1995, Ch. 887, Sec. 5. Effective January 1, 1996.)

1294.4. Nothing in this chapter shall be construed to prohibit a minor engaged in the delivery of newspapers to consumers from making deliveries by foot, bicycle, public transportation, or by an automobile driven by a person 16 years of age or older.

(Amended by Stats. 1995, Ch. 887, Sec. 6. Effective January 1, 1996.)

1294.5. (a) Minors 16 and 17 years of age may work in gas service stations in the following activities:

(1) Dispensing gas or oil.

(2) Courtesy service.

(3) Car cleaning, washing, and polishing.

(4) Activities specified in Section 1294.3.

(b) No minor 16 or 17 years of age may perform work in gas service stations that involves the use of pits, racks, or lifting apparatus, or that involves the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(c) Minors under the age of 16 years may be employed in gas service stations to perform only those activities specified in Section 1294.3.

(Added by Stats. 1994, Ch. 1175, Sec. 12. Effective January 1, 1995.)

1295. (a) Sections 1292, 1293, 1294, and 1294.5 shall not apply to any of the following:

(1) Courses of training in vocational or manual training schools or in state institutions.

(2) Apprenticeship training provided in an apprenticeship training program established pursuant to Chapter 4 (commencing with Section 3070) of Division 3.

(3) Work experience education programs conducted pursuant to either or both Section 29007.5 and Article 5.5 (commencing with Section 5985) of Chapter 6 of Division 6 of the Education Code, provided that the work experience coordinator determines that the students have been sufficiently trained in the employment or

work otherwise prohibited by these sections, if parental approval is obtained, and the principal or the counselor of the student has determined that the progress of the student toward graduation will not be impaired.

(b) Section 1294.1 shall not apply to the following persons as provided by Section 570.72 of Title 29 of the Code of Federal Regulations:

(1) Student-learners in a bona fide vocational agriculture program working in the occupations specified in paragraph (1) of subdivision (a) of Section 1294.1 under a written agreement that provides that the student-learner's work is incidental to training, intermittent, for short periods of time, and under close supervision of a qualified person, and includes all of the following:

(A) Safety instructions given by the school and correlated with the student-learners's on-the-job training.

(B) A schedule of organized and progressive work processes for the student-learner.

(C) The name of the student-learner.

(D) The signature of the employer and a school authority, each of whom must keep copies of the agreement.

(2) Minors 14 or 15 years of age who hold certificates of completion of either a tractor operation or a machine operation program and who are working in the occupations for which they have been trained. These certificates are valid only for the occupations specified in paragraph (1) of subdivision (a) of Section 1294.1. Farmers employing minors who have completed this program shall keep a copy of the certificates of completion on file with the minor's records.

(3) Minors 14 and 15 years old who hold certificates of completion of either a tractor operation or a machine operation program of the United States Office of Education Vocational Agriculture Training Program and are working in the occupations for which they have been trained. These certificates are valid only for the occupations specified in paragraph (1) of subdivision (a) of Section 1294.1. Farmers employing minors who have completed this program shall keep a copy of the certificate of completion on file with the minor's records.

(Amended by Stats. 1995, Ch. 91, Sec. 105. Effective January 1, 1996.)

1295.5. (a) Notwithstanding Section 1391 of this code or Section 49116 of the Education Code, minors 14 years of age and older may be employed during the hours permitted by subdivision (b) to perform sports-attending services in professional baseball as enumerated in subsection (b) of Section 570.35 of Title 29 of the Code of Federal Regulations. No employer may employ a minor 14 or 15 years of age to perform sports-attending services in professional baseball without the prior written approval of either the school district of the school in which the minor is enrolled or the county board of education of the county in which that school district is located.

(b) Any minor 14 or 15 years of age who performs sports-attending services in professional baseball pursuant to subdivision (a) may be employed outside of school hours until 12:30 a.m. during any evening preceding a nonschoolday and until 10 p.m. during any evening preceding a schoolday. No employer may employ a minor 14 or 15 years of age to perform sports-attending services in professional baseball pursuant to subdivision (a) for more than five hours in any schoolday, for more than 18 hours in any week while school is in session, for more than eight hours in any nonschoolday, or for more than 40 hours in any week that school is not in session. An employer may employ a minor 16 or 17 years of age outside of school hours to perform sports-attending services in professional baseball pursuant to subdivision (a) for up to five hours in any schoolday.

(c) The school authority issuing the permit to the minor to perform sports-attending services in professional baseball shall both (1) provide the local office of the Division of Labor Standards Enforcement with a copy of the permit within five business days after the date the permit is issued and (2) monitor the academic achievement of the minor to ensure that the educational progress of the minor is being maintained or improves during the period of employment.

(Amended by Stats. 1998, Ch. 485, Sec. 120. Effective January 1, 1999.)

1296. The Division of Labor Standards Enforcement may, after a hearing, determine whether any particular trade, process of manufacture, or occupation, in which the employment of minors is not already forbidden by law, or whether any particular method of carrying on the trade, process of manufacture, or occupation is sufficiently dangerous to the lives or limbs or injurious to the health or morals of minors to justify their exclusion therefrom. No minor shall be employed or permitted to work in any occupation thus determined to be dangerous or injurious to minors. Any determination hereunder may be reviewed by the superior court.

(Amended by Stats. 1995, Ch. 91, Sec. 106. Effective January 1, 1996.)

1297. No minor under the age of 16 years shall be employed or permitted to work as a messenger for any telegraph, telephone, or messenger company, or for the United States government or any of its departments while operating a telegraph, telephone, or messenger service, in the distribution, transmission, or delivery of goods or messages in cities of more than 15,000 inhabitants; nor shall any minor under the age of 18 years be employed, permitted, or suffered to engage in such work before 6 o'clock in the morning or after 9 o'clock in the evening. Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

(Amended by Stats. 1992, Ch. 1189, Sec. 3. Effective January 1, 1993.)

1298. (a) Notwithstanding Section 1308.1, no minor under 12 years of age shall be employed or permitted to work at any time in or in connection with the occupation of selling or distributing newspapers, magazines, periodicals, or circulars.

(b) This section shall not apply to a minor who is at least 10 years of age and is engaged as a newspaper carrier on the effective date of the act adding this subdivision.

(Amended by Stats. 1994, Ch. 1175, Sec. 15. Effective January 1, 1995.)

1299. Every person, or agent or officer thereof, employing minors, either directly or indirectly through third persons, shall keep on file all permits and certificates, either to work or to employ, issued under this article or Part 27 (commencing with Section 48000) of the Education Code. The files shall be open at all times to the inspection of the school attendance and probation officers, the State Board of Education, and the officers of the Division of Labor Standards Enforcement.

(Amended by Stats. 1988, Ch. 96, Sec. 7.)

1300. All certificates and permits to work or to employ shall be subject to cancellation at any time by the Labor Commissioner or by the issuing authority, whenever the commissioner or the issuing authority finds that the conditions for the legal issuance of such certificate or permit no longer exist or have never existed.

(Amended by Stats. 1972, Ch. 1441.)

1301. (a) The provisions of this article concerning the employment of minors, and the civil penalties for violations of those provisions, shall be fully applicable to every person who owns or controls the real property upon which a minor is employed, whether or not that person is the minor's employer, if

the minor's employment is for the benefit of the person, and the person has knowingly permitted the violation or continuation of violations.

(b) The posting of a notice pursuant to Section 49140 of the Education Code shall not operate to exempt any person from this article.

(Amended by Stats. 2006, Ch. 538, Sec. 484. Effective January 1, 2007.)

1302. The attendance supervisor, who is a full-time attendance supervisor performing no other duties, of any county, city and county, or school district in which any place of employment is situated, or the probation officer of the county, may at any time, enter the place of employment for the purpose of examining permits to work or to employ of all minors employed in the place of employment, or for the purpose of investigating violations of this article or of Chapter 2 (commencing with Section 48200), 3 (commencing with Section 48400), or 7 (commencing with Section 49100) of Part 27 of the Education Code. If an attendance supervisor or probation officer is denied entrance to the place of employment, or if any violations of laws relating to the employment of minors are found to exist, the attendance supervisor or probation officer shall report the denial of entrance or the violation to the Labor Commissioner. The report shall be made within 48 hours and shall be in writing, setting forth the fact that he or she has good cause to believe that these laws are being violated in the place of employment, and describing the nature of the violation.

(Amended by Stats. 2006, Ch. 538, Sec. 485. Effective January 1, 2007.)

1303. Any person, or agent or officer thereof, employing either directly or indirectly through third persons, or any parent or guardian of a minor affected by this article who violates any provision hereof, or who employs, or permits any minor to be employed in violation hereof, is guilty of a misdemeanor, punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or imprisonment in the county jail for not more than six months, or both. Any person who willfully violates this article shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000) or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(Amended by Stats. 1994, Ch. 1175, Sec. 16. Effective January 1, 1995.)

1304. Failure to produce any permit or certificate either to work or to employ is prima facie evidence of the illegal employment of any minor whose permit or certificate is not so produced. Proof that any person was the manager or superintendent of any place of employment subject to the provisions of this article at the time any minor is alleged to have been employed therein in violation thereof, is prima facie evidence that the person employed, or permitted the minor so to work. The sworn statement of the Labor Commissioner or his deputy or agents as to the age of any child affected by this article is prima facie evidence of the age of such child.

(Amended by Stats. 1969, Ch. 1589.)

1305. (a) All fines and penalties collected under this article, other than as the result of a judicial proceeding to enforce collection, shall be paid to the department in the form of remittances payable to the Department of Industrial Relations. The department shall transmit the payments to the State Treasury and the payments shall be credited to the General Fund.

(b) Notwithstanding Section 1463 of the Penal Code, all fines and penalties collected in judicial proceedings to enforce their collection, except for the civil penalties that are assessed and collected pursuant to Sections 1287, 1288, and 1289, shall be allocated pursuant to court order. The court shall direct that 50 percent of the fines and penalties assessed shall be transmitted to the county treasury, if prosecuted by the district attorney or the county counsel, or to the city treasury, if prosecuted by the city attorney, 25 percent of the fines and penalties assessed shall be transmitted to the Department of Industrial Relations to be available, upon appropriation by the Legislature, for the purpose of recovering costs incurred by the department pursuant to this chapter, and 25 percent of the fines and penalties assessed be transmitted to the Treasurer for deposit in the State Treasury to the credit of the General Fund.

(Amended by Stats. 1995, Ch. 887, Sec. 7. Effective January 1, 1996.)

1307. All minors coming within the provisions of Division 9 (commencing with Section 10501) of the Education Code shall be placed or delivered into the custody of the school district authorities of the county or city in which they are found illegally at work.

(Amended by Stats. 1965, Ch. 157.)

1308. (a) Any person is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), imprisonment for not exceeding six months, or both, who, as parent, relative, guardian, employer, or otherwise having the care, custody, or control of any minor under the age of 16 years, exhibits, uses, or employs, or in any manner or under any pretense, sells, apprentices, gives away, lets out, or disposes of the minor to any person, under any name, title, or pretense for, or who causes, procures, or encourages the minor to engage in any of the following:

(1) Any business, exhibition, or vocation injurious to the health or dangerous to the life or limb of the minor.

(2) The vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever.

(3) Any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever. Notwithstanding any other provision of law, this paragraph shall apply to a person with respect to any minor under the age of 18 years.

(4) Any mendicant or wandering business.

Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000), or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(b) Nothing in this section applies to or affects any of the following:

(1) The employment or use of any minor as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music.

(2) The employment of any minor as a musician at any concert or other musical entertainment, or as a performer in any form of entertainment, on the written consent of the Labor Commissioner pursuant to Section 1308.5.

(3) The participation by any minor of any age, whether or not the minor receives payment for his or her services or receives money prizes, in any horseback riding exhibition, contest, or event other than a rough stock rodeo event, circus, or race. As used in this paragraph, "rough stock rodeo event" means any rodeo

event operated for profit or operated by other than a nonprofit organization in which unbroken, little-trained, or imperfectly trained animals are ridden or handled by the participant, and shall include, but not be limited to, saddle bronc riding, bareback riding, and bull riding. As used in this paragraph, "race" means any speed contest between two or more animals that are on a course at the same time and that is operated for profit or operated other than by a nonprofit organization.

(4) The leading of livestock by a minor in nonprofit fairs, stock parades, livestock shows and exhibitions.

(Amended by Stats. 1995, Ch. 887, Sec. 8. Effective January 1, 1996.)

1308.1. (a) No minor under the age of 6 years shall be permitted to engage in the door-to-door sales or street sales of candy, cookies, flowers, or any other merchandise or commodities.

(b) No minor under 16 years of age, permitted by law to engage in door-to-door sales of newspaper or magazine subscriptions, or of candy, cookies, flowers, or other merchandise or commodities, shall be employed in those activities more than 50 miles from his or her place of residence.

(Amended by Stats. 1994, Ch. 1175, Sec. 19. Effective January 1, 1995.)

1308.2. (a) Except as provided in subdivision (f), any person 18 years of age or older who transports, or provides direction or supervision during transportation of, a minor under 16 years of age to any location more than 10 miles from the minor's residence, or directs or supervises a minor, for the purpose of facilitating the minor's participation in door-to-door sales of any merchandise or commodity, shall register with the Labor Commissioner pursuant to this section. Registration may be renewed on an annual basis.

(b) The Labor Commissioner shall not register or renew registration of any person pursuant to this section unless all of the following conditions are satisfied:

(1) The person has executed a written application on a form prescribed by the Labor Commissioner, including all of the following:

(A) The name, address, social security number, and California driver's license number of the applicant and the name, address, and employer identification number of the organization from which the merchandise to be sold is purchased. The information provided pursuant to this subparagraph shall be set forth in a declaration of the individual applicant under penalty of perjury.

(B) A statement by the applicant containing all facts required by the Labor Commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the applicant proposes to transport the minor or minors, the number of minors to be transported, methods and levels of adult supervision to be provided, the nature of the merchandise to be sold, the content of any promotional statement to be delivered by any minor, and a description of how the merchandise or commodity to be sold would be represented to the public.

(2) The Labor Commissioner, following an investigation thereof, is satisfied as to the character, competency, and responsibility of the applicant.

(3) Each application for initial registration shall be accompanied by a fee determined by the Labor Commissioner in an amount sufficient in the aggregate to defray the division's costs of administering the registration program, but which shall not exceed one hundred dollars ($100) for initial registration or fifty dollars ($50) for registration renewal.

(c) Any registrant under this section shall have proof of registration with the Labor Commissioner in his or her immediate possession at all times when engaged in any activity described in subdivision (a).

(d) Whenever an application for a registration or renewal is made, and application processing pursuant to this section has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional registration valid for a period not exceeding 90 days, and subject, where appropriate, to summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal of registration shall meet the requirements of subdivision (b).

(e) Any person who violates subdivision (a) or (c) is guilty of a misdemeanor, punishable by a fine of one thousand dollars ($1,000) per affected minor upon the first conviction for a violation, two thousand five hundred dollars ($2,500) per affected minor for the second conviction for a violation, and ten thousand dollars ($10,000) per affected minor for a third or subsequent conviction for a violation.

(f) The following persons are not required to register under this section:

(1) A parent or the guardian of the minor.

(2) A person solely providing transportation for hire, who is not otherwise subject to the registration requirements of subdivision (a).

(3) A person acting on behalf of a trustee or charitable corporation, as defined in Sections 12582 and 12582.1, respectively, of the Government Code, or of any entity described in Section 12583 of the Government Code.

(Added by Stats. 1994, Ch. 1175, Sec. 20. Effective January 1, 1995.)

1308.3. (a) Except as provided in subdivision (g), any individual, association, corporation, or other entity that employs or uses, either directly or indirectly through third persons, minors under 16 years of age in door-to-door sales at any location more than 10 miles from the minor's residence shall register with the Labor Commissioner pursuant to this section. Registration may be renewed on an annual basis.

(b) The Labor Commissioner shall not register or renew registration of any applicant pursuant to this section unless all of the following conditions are satisfied:

(1) The organization has executed a written application therefor on a form prescribed by the Labor Commissioner, including all of the following:

(A) The company's name, address, and employer identification number, and the names, addresses, and social security numbers of all adults employed to supervise, accompany, or transport minors who would be engaged in door-to-door sales. The information provided pursuant to this subparagraph shall be set forth in a declaration under penalty of perjury by the applicant if an individual, or an officer of an applicant that is an association, corporation, or other entity.

(B) A statement of all the facts required by the Labor Commissioner concerning the nature of the merchandise to be sold and a plan detailing the level and nature of adult supervision to be provided minors engaged in door-to-door sales. The information provided pursuant to this subparagraph shall be by declaration under penalty of perjury by the individual, or an officer of the association, corporation, or other entity.

(C) A copy of any written contract or other written agreement to be offered by the applicant to minors employed or used by the applicant in door-to-door sales.

(2) The Labor Commissioner, following an investigation thereof, is satisfied that the employer has not previously violated

this article and does not propose to expose minors in its employ to hazardous or unsafe working conditions.

(3) Each application for initial registration shall be accompanied by a fee determined by the Labor Commissioner in an amount sufficient in the aggregate to defray the division's costs of administering the registration program, but which shall not exceed three hundred fifty dollars ($350) for initial registration or two hundred dollars ($200) for registration renewal.

(c) Any registrant under this section shall, upon request, make available for inspection by the Labor Commissioner all of its payroll records for any period.

(d) Any registrant under this section, or person acting on behalf of a registrant, shall have proof of registration with the Labor Commissioner in his or her immediate possession at all times when engaged in any activity described in subdivision (a).

(e) Whenever an application for a registration or renewal is made, and application processing pursuant to this section has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional registration valid for a period not exceeding 90 days, and subject, where appropriate, to summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal of registration shall meet the requirements of subdivision (a).

(f) Any person or entity, or any agent or officer thereof, who violates subdivision (a) or (d), and any parent or guardian who knowingly permits a minor in his or her custody to be employed in door-to-door sales specified in subdivision (a) by an unregistered person or entity, or permits any minor to be employed in violation hereof, is guilty of a misdemeanor, punishable by a fine of one thousand dollars ($1,000) per affected minor for the first conviction for a violation, two thousand five hundred dollars ($2,500) per affected minor for the second conviction for a violation, and ten thousand dollars ($10,000) per affected minor for a third or subsequent conviction for a violation.

(g) This section does not apply to any trustee or charitable corporation, as defined in Sections 12582 and 12582.1, respectively, of the Government Code, or to any entity described in Section 12583 of the Government Code.

(Amended by Stats. 1995, Ch. 887, Sec. 9. Effective January 1, 1996.)

1308.4. The Labor Commissioner may revoke, suspend, or refuse to renew any registration under Section 1308.2 or 1308.3 when any of the following have occurred:

(a) The registrant or any agent of the registrant has violated or failed to comply with Section 1308.2 or 1308.3.

(b) The registrant has made any misrepresentation or false statement in his or her application for registration under Section 1308.2 or 1308.3.

(c) The registrant has operated in a manner substantially different from the conditions of operation stated in the application for registration.

(d) The registrant, or any agent of the registrant, has been found by a court of law or the Labor Commissioner to have violated, or willfully aided or abetted any person in the violation of, any law of this state regulating the employment of minors, the payment of wages to minors, or the conditions, terms, or places of employment affecting the health and safety of minors.

(e) The registrant has been found, by a court of law or the Secretary of Labor, to have violated any provision of the child labor provisions set forth in Section 12 of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. Sec. 212).

(Added by Stats. 1994, Ch. 1175, Sec. 22. Effective January 1, 1995.)

1308.5. (a) This section, with the exception of paragraph (4) of this subdivision, shall apply to all minors under the age of 16 years. The written consent of the Labor Commissioner in the form of a permit to employ a minor in the entertainment industry is required for any minor, not otherwise exempted by this chapter, for any of the following:

(1) The employment of any minor, in the presentation of any drama, legitimate play, or in any radio broadcasting or television studio.

(2) The employment of any minor 12 years of age or over in any other performance, concert, or entertainment.

(3) The appearance of any minor over the age of eight years in any performance, concert, or entertainment during the public school vacation.

(4) Allowing any minor between the ages of 8 and 18 years, who is by any law of this state permitted to be employed as an actor, actress, or performer in a theater, motion picture studio, radio broadcasting studio, or television studio, before 10 p.m., in the presentation of a performance, play, or drama continuing from an earlier hour until after 10 p.m., to continue his or her part in such presentation between the hours of 10 p.m. and midnight.

(5) The appearance of any minor in any entertainment which is noncommercial in nature.

(6) The employment of any minor artist in the making of phonograph recordings.

(7) The employment of any minor as an advertising or photographic model.

(8) The employment or appearance of any minor pursuant to a contract approved by the superior court under Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of the Family Code.

(b) Any person, or the agent, manager, superintendent, or officer thereof, employing either directly or indirectly through third persons, or any parent or guardian of a minor who employs, or permits any minor to be employed in violation of any of the provisions of this section is guilty of a misdemeanor. Failure to produce the written consent from the Labor Commissioner is prima facie evidence of the illegal employment of any minor whose written consent is not produced.

(Amended by Stats. 2011, Ch. 557, Sec. 1. Effective January 1, 2012.)

1308.6. No consent shall be given at any time unless the officer giving it is satisfied that all of the following conditions are met:

(a) The environment in which the performance, concert, or entertainment is to be produced is proper for the minor.

(b) The conditions of employment are not detrimental to the health of the minor.

(c) The minor's education will not be neglected or hampered by his or her participation in the performance, concert, or entertainment.

The Labor Commissioner may require the authority charged with the issuance of age and schooling certificates to make the necessary investigation into the conditions covered by this section.

(Added by renumbering Section 1396 by Stats. 1988, Ch. 96, Sec. 9.)

1308.7. (a) No minor shall be employed in the entertainment industry more than eight hours in one day of 24 hours, or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor may work the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(b) For purposes of this section, "schoolday" means any day in which a minor is required to attend school for 240 minutes or more.

(c) Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section, is guilty of a misdemeanor punishable by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than 60 days, or both.

(Added by Stats. 1993, Ch. 570, Sec. 1. Effective September 28, 1993.)

1308.8. (a) No infant under the age of one month may be employed on any motion picture set or location unless a licensed physician and surgeon who is board-certified in pediatrics provides written certification that the infant is at least 15 days old and, in his or her medical opinion, the infant was carried to full term, was of normal birth weight, is physically capable of handling the stress of filmmaking, and the infant's lungs, eyes, heart, and immune system are sufficiently developed to withstand the potential risks.

(b) Any parent, guardian, or employer of a minor, and any officer or agent of an employer of a minor, who directly or indirectly violates subdivision (a), or who causes or suffers a violation of subdivision (a), with respect to that minor, is guilty of a misdemeanor punishable by a fine of not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000), by imprisonment in the county jail for not more than 60 days, or by both that fine and imprisonment.

(Added by Stats. 1998, Ch. 239, Sec. 1. Effective January 1, 1999.)

1308.9. (a) If the Labor Commissioner provides written consent pursuant to Section 1308.5 for the employment of a minor under a contract described in Section 6750 of the Family Code, that consent shall be void after the expiration of 10 business days from the date written consent was granted, unless it is attached to a true and correct copy of the trustee's statement evidencing the establishment on behalf of the minor of a "Coogan Trust Account" pursuant to Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of the Family Code. If the written consent is attached to a true and correct copy of that trustee's statement, the written consent shall be valid for a six-month period.

(b) A person may not apply for the written consent of the Labor Commissioner to employ the same minor under a contract described in Section 6750 of the Family Code more than once in any six-month period. If written consent is issued by the Labor Commissioner for the employment of the same minor more than once within any six-month period, the earliest dated written consent shall be valid and any other written consent issued during that six-month period shall be void.

(Added by Stats. 2003, Ch. 667, Sec. 4. Effective January 1, 2004.)

1308.10. (a) Prior to the employment of a minor under the age of 16 years in any of the circumstances listed in subdivision (a) of Section 1308.5, the Labor Commissioner may issue a temporary permit authorizing employment of the minor to enable a parent or guardian of the minor to meet the requirement for a permit under subdivision (a) of Section 1308.5 and to establish a trust account for the minor or to produce the documentation required by the Labor Commissioner for the issuance of a permit under Section 1308.5, subject to all of the following conditions:

(1) A temporary permit shall be valid for a period not to exceed 10 days from the date of issuance.

(2) A temporary permit shall not be issued for the employment of a minor if the minor's parent or guardian has previously applied for or been issued a permit by the Labor Commissioner pursuant to Section 1308.5 or a temporary permit pursuant to this section for employment of the minor.

(3) For infants who are subject to the requirements of Section 1308.8, a temporary permit shall not be issued before the requirements of that section are met.

(4) The Division of Labor Standards Enforcement shall prepare and make available on its Internet Web site the application form for a temporary permit. An applicant for a temporary permit shall submit a completed application and application fee online to the division. Upon receipt of the completed application and fee, the division shall immediately issue a temporary permit.

(b) The Labor Commissioner shall set forth the fee in an amount sufficient to pay for the costs of administering the online temporary minor's entertainment work permit program, but not to exceed fifty dollars ($50).

(Amended by Stats. 2016, Ch. 31, Sec. 178. Effective June 27, 2016.)

1308.11. (a) All registrations, fees, and permit fees collected under this article shall be deposited in the Labor Enforcement and Compliance Fund.

(b) On the effective date of this section, any moneys in the Entertainment Work Permit Fund and any assets, liabilities, revenues, expenditures, and encumbrances of that fund shall be transferred to the Labor Enforcement and Compliance Fund.

(Added by Stats. 2016, Ch. 31, Sec. 179. Effective June 27, 2016.)

1309. Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, for any of the purposes mentioned in Section 1308, any minor under the age of 16, or under the age of 18, as specified in paragraph (3) of subdivision (a) of Section 1308, is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisonment for not more than six months, or both.

Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000), or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(Amended by Stats. 1994, Ch. 1175, Sec. 23. Effective January 1, 1995.)

1309.5. (a) Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of these facts that he or she should reasonably know that the person is a minor under 18 years of age, knowingly sells or distributes for resale films, photographs, slides, or magazines which depict a minor under 18 years of age engaged in sexual conduct as defined in Section 311.4 of the Penal Code, shall determine the names and addresses of persons from whom this material is obtained, and shall keep a record of these names and addresses. These records shall be kept for a period of three years after the material is obtained, and shall be kept confidential except that they shall be available to law enforcement officers as described in Section 830.1 and subdivision (h) of Section 830.3 of the Penal Code upon request.

(b) Every retailer who knows or reasonably should know that films, photographs, slides, or magazines depict a minor under the age of 18 years engaged in sexual conduct as defined in Section 311.4 of the Penal Code, shall keep a record of the names and addresses of persons from whom this material is acquired. These records shall be kept for a period of three years after the material is acquired, and shall be kept confidential except that they shall be available to law enforcement officers as described

in Section 830.1 and subdivision (h) of Section 830.3 of the Penal Code upon request.

(c) The failure to keep and maintain the records described in subdivisions (a) and (b) for a period of three years after the obtaining or acquisition of this material is a misdemeanor. Disclosure of these records by law enforcement officers, except in the performance of their duties, is a misdemeanor.

(Amended by Stats. 1989, Ch. 806, Sec. 5.)

1309.6. (a) Any person who violates any provision of Section 1309.5 shall be liable for a civil penalty not to exceed seven thousand five hundred dollars ($7,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(b) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(Amended by Stats. 1995, Ch. 887, Sec. 10. Effective January 1, 1996.)

1310. Nothing in this article or Article 2 (commencing with Section 1390) of Chapter 3 shall prohibit or prevent:

(a) The appearance of any minor in any church, public or religious school, or community entertainment.

(b) The appearance of any minor in any school entertainment or in any entertainment for charity or for children, for which no admission fee is charged.

(c) The appearance of any minor in any radio or television broadcasting exhibition, where the minor receives no compensation directly or indirectly therefor, and where the engagement of the minor is limited to a single appearance lasting not more than one hour, and where no admission fee is charged for the radio broadcasting or television exhibition.

(d) The appearance of any minor at any one event during a calendar year, occurring on a day on which school attendance is not required or on the day preceding such a day, lasting four hours or less, where a parent or guardian of the minor is present, for which the minor does not directly or indirectly receive any compensation.

(Amended by Stats. 1992, Ch. 657, Sec. 1. Effective January 1, 1993.)

1311. The Division of Labor Standards Enforcement shall enforce this article.

(Amended by Stats. 1980, Ch. 676.)

1311.5. (a) This section shall be known and may be cited as the Child Labor Protection Act of 2014.

(b) The statute of limitations for claims arising under this code shall be tolled until an individual allegedly aggrieved by an unlawful practice attains the age of majority. This subdivision is declaratory of existing law.

(c) In addition to other remedies available, an individual who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms or conditions of his or her employment because the individual filed a claim or civil action alleging a violation of this code that arose while the individual was a minor, whether the claim or civil action was filed before or after the individual reached the age of majority, is entitled to treble damages.

(d) A class "A" violation, as defined in subdivision (a) of Section 1288, that involves a minor 12 years of age or younger shall be subject to a civil penalty in an amount not less than twenty-five thousand dollars ($25,000) and not exceeding fifty thousand dollars ($50,000) for each violation.

(Amended by Stats. 2015, Ch. 303, Sec. 376. Effective January 1, 2016.)

1312. Nothing in this article shall limit the authority of the Attorney General or the district attorney of any county, either upon their own complaint or the complaint of any person acting for himself or the general public, to prosecute actions, either civil or criminal, for violations of this article, or to enforce the provisions thereof independently and without specific direction of the director.

(Added by Stats. 1975, Ch. 144.)

Chapter 3. Working Hours

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

Article 2. Minors

(Article 2 enacted by Stats. 1937, Ch. 90.)

1390. As used in this article, unless the context otherwise indicates:

(a) "Horticultural" includes the curing and drying but not the canning of all varieties of fruit.

(b) "Drama" or "play" includes the production of motion picture plays.

(Enacted by Stats. 1937, Ch. 90.)

1391. (a) Except as provided in Sections 1297, 1298, and 1308.7:

(1) No employer shall employ a minor 15 years of age or younger for more than eight hours in one day of 24 hours, or more than 40 hours in one week, or before 7 a.m. or after 7 p.m., except that from June 1 through Labor Day, a minor 15 years of age or younger may be employed for the hours authorized by this section until 9 p.m. in the evening.

(2) Notwithstanding paragraph (1), while school is in session, no employer shall employ a minor 14 or 15 years of age for more than three hours in any schoolday, nor more than 18 hours in any week, nor during school hours, except that a minor enrolled in and employed pursuant to a school-supervised and school-administered work experience and career exploration program may be employed for no more than 23 hours, any portion of which may be during school hours.

(3) No employer shall employ a minor 16 or 17 years of age for more than eight hours in one day of 24 hours or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor 16 or 17 years of age may be employed for the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(4) Notwithstanding paragraph (3), while school is in session, no employer shall employ a minor 16 or 17 years of age for more than four hours in any schoolday, except as follows:

(A) The minor is employed in personal attendant occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 15 (8 Cal. Code Regs. Sec. 11150), school-approved work experience, or cooperative vocational education programs.

(B) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(b) For purposes of this section, "schoolday" means any day in which a minor is required to attend school for 240 minutes or more.

(c) Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisonment in the county jail for not more than 60 days, or both. Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars ($10,000) or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

(Amended by Stats. 1995, Ch. 887, Sec. 11. Effective January 1, 1996.)

1391.1. Minors 16 years of age or older and under the age of 18 years enrolled in work experience or cooperative vocational education programs approved by the State Department of Education or in work experience education programs conducted by private schools may work after 10 p.m. but not later than 12:30 a.m., providing such employment is not detrimental to the health, education, or welfare of the minor and the approval of the parent and the work experience coordinator has been obtained. However, if any such minor works any time during the hours from 10 p.m. to 12:30 a.m., he or she shall be paid for work during that time at a rate which is not less than the minimum wage paid to adults.

(Amended by Stats. 1982, Ch. 231, Sec. 1.)

1391.2. (a) Notwithstanding Sections 1391 and 1391.1, any minor under 18 years of age who has been graduated from a high school maintaining a four-year course above the eighth grade of the elementary schools, or who has had an equal amount of education in a private school or by private tuition, or who has been awarded a certificate of proficiency pursuant to Section 48412 of the Education Code, may be employed for the same hours as an adult may be employed in performing the same work.

(b) Notwithstanding the provisions of the orders of the Industrial Welfare Commission, no employer shall pay any minor described in this section in his employ at wage rates less than the rates paid to adult employees in the same establishment for the same quantity and quality of the same classification of work; provided, however, that nothing herein shall prohibit a variation of rates of pay for such minors and adult employees engaged in the same classification of work based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or other reasonable differentiation, when exercised in good faith.

(Added by Stats. 1977, Ch. 765.)

1392. Every person who has a minor under his or her control, as a ward or an apprentice, and who, except in household occupations, requires the minor to work more than eight hours in any one day, is guilty of a misdemeanor.

(Amended by Stats. 1994, Ch. 1175, Sec. 25. Effective January 1, 1995.)

1393. (a) Notwithstanding any other provision of this article and Article 2 (commencing with Section 49110) of Chapter 7 of Part 27 of Division 4 of Title 2 of the Education Code, the Labor Commissioner may issue an exemption from laws regulating the employment of minors to employers operating agricultural packing plants that employ minors 16 and 17 years of age during any day during which school is not in session, for up to 10 hours per day during the peak harvest season. These exemptions shall only be granted if they do not materially affect the safety and welfare of minor employees and will prevent undue hardship on the employer. The Labor Commissioner may require an inspection of an agricultural packing plant prior to issuing an exemption.

(b) Any exemption granted pursuant to subdivision (a) shall be in writing to be effective, and may be revoked after reasonable notice is given, in writing, by the Labor Commissioner. Any notice of revocation shall include the reason for the revocation.

(c) An application for an exemption under subdivision (a) shall be made by an employer on a form provided by the Labor Commissioner, and a copy of the application shall be posted at the employer's place of employment at the time the application is filed with the division.

(Amended by Stats. 1995, Ch. 887, Sec. 12. Effective January 1, 1996.)

1393.5. (a) Notwithstanding any other provision of this article or Article 2 (commencing with Section 49110) of Chapter 7 of Part 27 of Division 4 of Title 2 of the Education Code, an exemption issued pursuant to Section 1393 may authorize the employment during the peak harvest season of a minor, 16 or 17 years of age who resides in the County of Lake during any day in which school is not in session for up to 10 hours per day and more than 48 hours but not more than 60 hours in any one week, only upon the prior written approval of the Lake County Office of Education.

(b) Each year, the Labor Commissioner, prior to issuing or renewing an exemption under this section, shall inspect the affected agricultural packing plant.

(c) As a condition of receiving an exemption or a renewal of an exemption under this section, an affected employer shall, on or before October 1 of each year, file a written report to the Labor Commissioner that contains the following employment information regarding the employer's payroll for the same year up to September 15:

(1) The number of minors employed by that employer.

(2) A list of the age and hours worked on a weekly basis of each minor employed.

(d) Notwithstanding Chapter 24 (commencing with Section 7550) of Division 7 of Title 1 of the Government Code, the Labor Commissioner shall submit a written report to the Legislature, on or before November 1, 2016, that describes the general working conditions of minors employed in the agricultural packing industry during the period from March 1, 2011, to October 1, 2016, inclusive, and that includes all of the following information:

(1) The number of minors employed in the agricultural packing industry.

(2) The number of exemptions issued, renewed, or denied pursuant to this section.

(3) A summary of the inspections conducted by the Labor Commissioner pursuant to this section.

(4) The number of workplace injuries that occurred to minors at agricultural packing plants.

(5) The number of violations of labor laws and regulations that occurred at agricultural packing plants.

(e) (1) Notwithstanding Chapter 24 (commencing with Section 7550) of Division 7 of Title 1 of the Government Code, the Labor Commissioner shall submit a written report to the Legislature, on or before November 1, 2020, that describes the general working conditions of minors employed in the agricultural packing industry during the period from October 1, 2016, to

October 1, 2020, inclusive, and that includes for this period all the information described in paragraphs (1) to (5), inclusive, of subdivision (d).

(2) A report submitted pursuant to paragraph (1) shall be provided in compliance with Section 9795 of the Government Code.

(f) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

(Amended by Stats. 2016, Ch. 775, Sec. 1. Effective January 1, 2017. Repealed as of January 1, 2022, by its own provisions.)

1394. Nothing in this article or Article 2 (commencing with Section 1285) of Chapter 2 shall prohibit or prevent either of the following:

(a) The employment of any minor at agricultural, horticultural, viticultural, or domestic labor during the time the public schools are not in session, or during other than school hours, when the work performed is for or under the control of his parent or guardian and is performed upon or in connection with premises owned, operated or controlled by the parent or guardian. However, nothing herein shall permit children under schoolage to work at these occupations, while the public schools are in session.

(b) The full-time employment of minors who meet all other legal employment requirements, if they are exempt from compulsory school attendance under Section 48231 of the Education Code.

(Amended by Stats. 1994, Ch. 1175, Sec. 27. Effective January 1, 1995.)

1398. The Division of Labor Standards Enforcement shall enforce the provisions of this article.

(Amended by Stats. 1980, Ch. 676.)

1399. Nothing in this article shall limit the authority of the Attorney General or the district attorney of any county, either upon their own complaint or the complaint of any person acting for himself or the general public, to prosecute actions, either civil or criminal, for violations of this article, or to enforce the provisions thereof independently and without specific direction of the director.

(Added by Stats. 1975, Ch. 144.)

Chapter 4. Relocations, Terminations, and Mass Layoffs

(Chapter 4 added by Stats. 2002, Ch. 780, Sec. 1.)

1400. The definitions set forth in this section shall govern the construction and meaning of the terms used in this chapter:

(a) "Covered establishment" means any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 75 or more persons.

(b) "Employer" means any person, as defined by Section 18, who directly or indirectly owns and operates a covered establishment. A parent corporation is an employer as to any covered establishment directly owned and operated by its corporate subsidiary.

(c) "Layoff" means a separation from a position for lack of funds or lack of work.

(d) "Mass layoff" means a layoff during any 30-day period of 50 or more employees at a covered establishment.

(e) "Relocation" means the removal of all or substantially all of the industrial or commercial operations in a covered establishment to a different location 100 miles or more away.

(f) "Termination" means the cessation or substantial cessation of industrial or commercial operations in a covered establishment.

(g) (1) This chapter does not apply where the closing or layoff is the result of the completion of a particular project or undertaking of an employer subject to Wage Order 11, regulating the Broadcasting Industry, Wage Order 12, regulating the Motion Picture Industry, or Wage Order 16, regulating Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries, of the Industrial Welfare Commission, and the employees were hired with the understanding that their employment was limited to the duration of that project or undertaking.

(2) This chapter does not apply to employees who are employed in seasonal employment where the employees were hired with the understanding that their employment was seasonal and temporary.

(h) "Employee" means a person employed by an employer for at least 6 months of the 12 months preceding the date on which notice is required.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1401. (a) An employer may not order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before the order takes effect, the employer gives written notice of the order to the following:

(1) The employees of the covered establishment affected by the order.

(2) The Employment Development Department, the local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.

(b) An employer required to give notice of any mass layoff, relocation, or termination under this chapter shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

(c) Notwithstanding the requirements of subdivision (a), an employer is not required to provide notice if a mass layoff, relocation, or termination is necessitated by a physical calamity or act of war.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1402. (a) An employer who fails to give notice as required by paragraph (1) of subdivision (a) of Section 1401 before ordering a mass layoff, relocation, or termination is liable to each employee entitled to notice who lost his or her employment for:

(1) Back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

(b) Liability under this section is calculated for the period of the employer's violation, up to a maximum of 60 days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller.

(c) The amount of an employer's liability under subdivision (a) is reduced by the following:

(1) Any wages, except vacation moneys accrued prior to the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(2) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

(3) Any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined

contribution pension plan, on behalf of and attributable to the employee for the period of the violation.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1402.5. (a) An employer is not required to comply with the notice requirement contained in subdivision (a) of Section 1401 if the department determines that all of the following conditions exist:

(1) As of the time that notice would have been required, the employer was actively seeking capital or business.

(2) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination.

(3) The employer reasonably and in good faith believed that giving the notice required by subdivision (a) of Section 1401 would have precluded the employer from obtaining the needed capital or business.

(b) The department may not determine that the employer was actively seeking capital or business under subdivision (a) unless the employer provides the department with both of the following:

(1) A written record consisting of all documents relevant to the determination of whether the employer was actively seeking capital or business, as specified by the department.

(2) An affidavit verifying the contents of the documents contained in the record.

(c) The affidavit provided to the department pursuant to paragraph (2) of subdivision (b) shall contain a declaration signed under penalty of perjury stating that the affidavit and the contents of the documents contained in the record submitted pursuant to paragraph (1) of subdivision (b) are true and correct.

(d) This section does not apply to notice of a mass layoff as defined by subdivision (d) of Section 1400.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1403. An employer who fails to give notice as required by paragraph (2) of subdivision (a) of Section 1401 is subject to a civil penalty of not more than five hundred dollars ($500) for each day of the employer's violation. The employer is not subject to a civil penalty under this section, however, if the employer pays to all applicable employees the amounts for which the employer is liable under Section 1402 within three weeks from the date the employer orders the mass layoff, relocation, or termination.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1404. A person, including a local government or an employee representative, seeking to establish liability against an employer may bring a civil action on behalf of the person, other persons similarly situated, or both, in any court of competent jurisdiction. The court may award reasonable attorney's fees as part of costs to any plaintiff who prevails in a civil action brought under this chapter.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1405. If the court determines that an employer conducted a reasonable investigation in good faith, and had reasonable grounds to believe that its conduct was not a violation of this chapter, the court may reduce the amount of any penalty imposed against the employer under this chapter.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1406. In any investigation or proceeding under this chapter, the Labor Commissioner has, in addition to all other powers granted by law, the authority to examine the books and records of an employer.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1407. (a) Payments to a person under subdivision (a) of Section 1402 by an employer who has failed to provide the advance notice of facility closure required by this chapter or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.) may not be construed as wages or compensation for personal services under Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1 of the Unemployment Insurance Code.

(b) Benefits payable under Chapter 5 (commencing with Section 1251) of Part 1 of Division 1 of the Unemployment Insurance Code may not be denied or reduced because of the receipt of payments related to an employer's violation of this chapter or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 2101 et seq.).

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

1408. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2002, Ch. 780, Sec. 1. Effective January 1, 2003.)

Part 4.2. Property Service Workers Protection

(Part 4.2 added by Stats. 2016, Ch. 373, Sec. 1.)

1420. For purposes of this part:

(a) (1) "Covered worker" means a janitor, including any individual predominantly working, whether as an employee, independent contractor, or a franchisee, as a janitor, as that term is defined in the Service Contract Act Directory of Occupations maintained by the United State Department of Labor.

(2) "Covered worker" does not include any individual whose work duties are predominantly final cleanup of debris, grounds, and buildings near the completion of a construction, alteration, demolition, installation, or repair work project, including, but not limited to, street cleaners.

(b) "Current and valid registration" means an active registration pursuant to this part that is not expired or revoked.

(c) "Department" means the Department of Industrial Relations.

(d) "Director" means the Director of Industrial Relations.

(e) (1) "Employer" means any person or entity that employs at least one employee and one or more covered workers and that enters into contracts, subcontracts, or franchise arrangements to provide janitorial services. The term "employer" includes the term "covered successor employer."

(2) "Covered successor employer" means an employer who meets one or more of the following criteria:

(A) Uses substantially the same equipment, supervisors, and workforce to offer substantially the same services to substantially the same clients as a predecessor employer, unless the employer maintains the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3. In addition, an employer who has operated with a current and valid registration for at least the preceding three years shall not be considered a covered successor employer for using substantially the same equipment, supervisors, and workforce to substantially the same clients, if all of the following apply:

(i) The individuals in the workforce were not referred or supplied for employment by the predecessor employer to the successor employer.

(ii) The successor employer has not had any interest in, or connection with, the operation, ownership, management, or

control of the business of the predecessor employer within the preceding three years.

(B) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor employer.

(C) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer. "Immediate family member" means a spouse, parent, sibling, son, daughter, uncle, aunt, niece, nephew, grandparent, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or cousin.

(f) "Commissioner" means the Labor Commissioner of the Division of Labor Standards Enforcement of the department.

(g) "Supervisor" has the same meaning as in subdivision (t) of Section 12926 of the Government Code.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1421. Every employer shall keep accurate records for three years, showing all of the following:

(a) The names and addresses of all employees engaged in rendering actual services for any business of the employer.

(b) The hours worked daily by each employee, including the times the employee begins and ends each work period.

(c) The wage and wage rate paid each payroll period.

(d) The age of all minor employees.

(e) Any other conditions of employment.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1422. The Division of Labor Standards Enforcement shall enforce this part. The commissioner may adopt any regulations necessary to carry out this part.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1423. Effective July 1, 2018, every employer shall register with the commissioner annually.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1424. When a certificate of current and valid registration is originally issued or renewed under this part, the Division of Labor Standards Enforcement shall provide related and supplemental information to the registrant regarding business administration and applicable labor laws. As of July 1, 2018, employers covered by this part shall provide all covered workers a copy of the Department of Fair Employment and Housing pamphlet DFEH-185, entitled "Sexual Harassment," until the sexual violence and harassment prevention training requirement is established pursuant to Section 1429.5.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1425. Proof of current and valid registration shall be by an official Division of Labor Standards Enforcement registration form.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1426. At least 60 days prior to the expiration of each registrant's registration, the Division of Labor Standards Enforcement shall send a renewal notice to the last known address of the registrant. However, omission of the Division of Labor Standards Enforcement to provide the renewal notice in accordance with this section shall not excuse a registrant from making timely application for renewal of registration, shall not be a defense in any action or proceeding involving failure to renew registration, and shall not subject the Division of Labor Standards Enforcement to any legal liability.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1427. The Division of Labor Standards Enforcement shall collect from each employer an initial nonrefundable application fee of five hundred dollars ($500), and an annual fee of five hundred dollars ($500) on the anniversary date of initial application, and may periodically adjust the registration fee in an amount sufficient to fund all direct and indirect costs to administer and enforce this part.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1428. An employer shall not conduct any business without complying with the registration requirements of this part. The commissioner may revoke a registration if he or she finds an employer to be out of compliance with any requirement of this part or to have failed to satisfy any of the conditions of Section 1429.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1429. The Division of Labor Standards Enforcement shall not approve the registration of any employer until all of the following conditions are satisfied:

(a) The employer has executed a written application, in a form prescribed by the commissioner and subscribed and sworn to by the employer containing the following:

(1) The name of the business entity and, if applicable, its fictitious or "doing business as" name.

(2) The form of the business entity and, if a corporation, all of the following:

(A) The date of incorporation.

(B) The state in which incorporated.

(C) If a foreign corporation, the date the articles of incorporation were filed with the California Secretary of State.

(D) Whether the corporation is in good standing with the California Secretary of State.

(3) The federal employer identification number (FEIN) and the state employer identification number (SEIN) of the business.

(4) The address of the business and the telephone number and, if applicable, the addresses and telephone numbers of any branch locations.

(5) Whether the application is for a new or renewal registration and, if the application is for a renewal, the prior registration number.

(6) The names, residential addresses, telephone numbers, and social security numbers of the following persons:

(A) All corporate officers, if the business entity is a corporation.

(B) All persons exercising management responsibility in the applicant's office, regardless of form of business entity.

(C) All persons, except bona fide employees on regular salaries, who have a financial interest of 10 percent or more in the business, regardless of the form of business entity, and the actual percent owned by each of those persons.

(7) The policy number, effective date, expiration date, and name and address of the carrier of the applicant business' current workers' compensation coverage.

(8) (A) Whether the employer and any persons named in response to subparagraph (A), (B), or (C) of paragraph (6) presently:

(i) Owe any unpaid wages.

(ii) Have unpaid judgments outstanding.

(iii) Have any liens or suits pending in court against himself or herself.

(iv) Owe payroll taxes, or personal, partnership, or corporate income taxes, Social Security taxes, or disability insurance.

(B) An applicant who answers affirmatively to any item described in subparagraph (A) shall provide, as part of the application, additional information on the unpaid amounts,

including the name and address of the party owed, the amount owed, and any existing payment arrangements.

(9) (A) Whether the employer and any persons named in response to subparagraph (A), (B), or (C) of paragraph (6) have ever been cited or assessed any penalty for violating any provision of this code.

(B) An applicant who answers affirmatively to any item described in subparagraph (A) shall provide additional information, as part of the application, on the date, nature of citation, amount of penalties assessed for each citation, and the disposition of the citation, if any. The application shall describe any appeal filed. If the citation was not appealed, or if it was upheld on appeal, the applicant shall state whether the penalty assessment was paid.

(10) Effective January 1, 2020, all new applications for registration and renewal of registration shall complete the sexual violence and harassment prevention training requirements prescribed by the division and developed pursuant to Section 1429.5.

(11) Such other information as the commissioner requires for the administration and enforcement of this part.

(b) The employer has paid a registration fee to the Division of Labor Standards Enforcement pursuant to Section 1427.

(c) Notwithstanding any other law, violation of this section shall not be a crime.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1429.5. The Division of Labor Standards Enforcement shall establish a biennial in-person sexual violence and harassment prevention training requirement for employees and employers covered by this part by January 1, 2019. To assist in developing these standards, the director shall convene an advisory committee to recommend requirements for a sexual harassment prevention training program. The advisory committee shall be composed of representatives of the Division of Labor Standards Enforcement, the Division of Occupational Safety and Health, and the Department of Fair Employment and Housing, and shall also include representatives from a recognized or certified collective bargaining agent that represents janitorial workers, employers, labor-management groups in the janitorial industry, sexual assault victims advocacy groups, and other related subject matter experts. The director shall convene the advisory committee no later than July 1, 2017. The advisory committee shall consider the requirements of Section 12950.1 of the Government Code when developing the recommended standard. The Division of Labor Standards Enforcement shall propose the requirements for the sexual violence and harassment prevention training requirement no later than January 1, 2018.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1430. The Division of Labor Standards Enforcement shall not register or renew the registration of an employer in any of the following circumstances:

(a) The employer has not fully satisfied any final judgment for unpaid wages due to an employee or former employee of a business for which the employer is required to register under this chapter.

(b) The employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code or the Employment Development Department has made an assessment for those unpaid contributions against the employer that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions.

(c) The employer has failed to remit the amount of Social Security and Medicare tax contributions required by the Federal Insurance Contributions Act (FICA) to the Internal Revenue Service and the employer has not fully paid the amount or delinquency for those unpaid contributions.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1431. The commissioner shall maintain a public database of property service employers, on the Internet Web site of the department, including the name, address, registration number, and effective dates of registration.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1432. (a) An employer who fails to register pursuant to Section 1423 is subject to a civil fine of one hundred dollars ($100) for each calendar day that the employer is unregistered, not to exceed ten thousand dollars ($10,000).

(b) Any person or entity that contracts with an employer who lacks a current and valid registration, as displayed on the online registration database at the time the contract is executed, extended, renewed, or modified, under this part on the date the person or entity enters into or renews a contract or subcontract for janitorial services with the employer is subject to a civil fine of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000) in the case of a first violation, and a civil fine of not less than ten thousand dollars ($10,000) nor more than twenty-five thousand dollars ($25,000) for a subsequent violation.

(c) Notwithstanding any other provision of law, the authority to enforce this section is vested exclusively with the commissioner. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1433. (a) All registration fees collected pursuant to Section 1427, all civil fines collected pursuant to Section 1432, and any other moneys as are designated by statute or order shall be deposited in the Labor Enforcement and Compliance Fund.

(b) Moneys deposited in the fund pursuant to Section 1427 and Section 1432 shall be used only for the following purposes:

(1) The reasonable costs of administering the registration of janitorial contractors pursuant to this part by the Division of Labor Standards and Enforcement.

(2) The costs and obligations associated with the administration and enforcement of this part by the Division of Labor Standards and Enforcement.

(c) The annual employer registration renewal fee specified in of Section 1427, and any adjusted application renewal fee, shall be set in amounts that are sufficient to support the direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this part.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

1434. A successor employer is liable for any wages and penalties its predecessor employer owes to any of the predecessor employer's former employee or employees, if the successor employer meets any of the following criteria:

(a) Uses substantially the same workforce to offer substantially the same services as the predecessor employer. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.

(b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.

(Added by Stats. 2016, Ch. 373, Sec. 1. Effective January 1, 2017.)

Part 4.5. Domestic Work Employees

(Part 4.5 added by Stats. 2013, Ch. 374, Sec. 1.)

Chapter 1. General Provisions and Definitions

(Chapter 1 added by Stats. 2013, Ch. 374, Sec. 1.)

1450. This part shall be known and may be cited as the Domestic Worker Bill of Rights.

(Added by Stats. 2013, Ch. 374, Sec. 1. Effective January 1, 2014.)

1451. As used in this part, the following definitions apply:

(a) (1) "Domestic work" means services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids, and other household occupations.

(2) "Domestic work" does not include care of persons in facilities providing board or lodging in addition to medical, nursing, convalescent, aged, or child care, including, but not limited to, residential care facilities for the elderly.

(b) (1) "Domestic work employee" means an individual who performs domestic work and includes live-in domestic work employees and personal attendants.

(2) "Domestic work employee" does not include any of the following:

(A) Any person who performs services through the In-Home Supportive Services program under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and Institutions Code.

(B) Any person who is the parent, grandparent, spouse, sibling, child, or legally adopted child of the domestic work employer.

(C) Any person under 18 years of age who is employed as a babysitter for a minor child of the domestic work employer in the employer's home.

(D) Any person employed as a casual babysitter for a minor child in the domestic employer's home. A casual babysitter is a person whose employment is irregular or intermittent and is not performed by an individual whose vocation is babysitting. If a person who performs babysitting services on an irregular and intermittent basis does a significant amount of work other than supervising, feeding, and dressing a child, this exemption shall not apply and the person shall be considered a domestic work employee. A person who is a casual babysitter who is over 18 years of age retains the right to payment of minimum wage for all hours worked, pursuant to Wage Order No. 15-2001 of the Industrial Welfare Commission.

(E) Any person employed by a licensed health facility, as defined in Section 1250 of the Health and Safety Code.

(F) Any person who is employed pursuant to a voucher issued through a regional center or who is employed by, or contracts with, an organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) or the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when any funding for those services is provided through the State Department of Developmental Services.

(G) Any person who provides child care and who, pursuant to subdivision (d) or (f) of Section 1596.792 of the Health and Safety Code, is exempt from the licensing requirements of Chapters 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), and 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code, if the parent or guardian of the child to whom child care is provided receives child care and development services pursuant to any program authorized under the Child Care and Development Services Act (Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1 of the Education Code) or the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code).

(c) (1) "Domestic work employer" means a person, including corporate officers or executives, who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of a domestic work employee.

(2) "Domestic work employer" does not include any of the following:

(A) Any person or entity that employs or exercises control over the wages, hours, or working conditions of an individual who performs domestic work services through the In-Home Supportive Services program under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and Institutions Code or who is eligible for that program.

(B) An employment agency that complies with Section 1812.5095 of the Civil Code and that operates solely to procure, offer, refer, provide, or attempt to provide work to domestic workers if the relationship between the employment agency and the domestic workers for whom the agency procures, offers, refers, provides, or attempts to provide domestic work is characterized by all of the factors listed in subdivision (b) of Section 1812.5095 of the Civil Code and Section 687.2 of the Unemployment Insurance Code.

(C) A licensed health facility, as defined in Section 1250 of the Health and Safety Code.

(d) "Personal attendant" means any person employed by a private householder or by any third-party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child, or a person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of personal attendant shall apply when no significant amount of work other than the foregoing is required. For purposes of this subdivision, "no significant amount of work" means work other than the foregoing did not exceed 20 percent of the total weekly hours worked.

(Added by Stats. 2013, Ch. 374, Sec. 1. Effective January 1, 2014.)

1452. The Governor shall convene a committee composed of personal attendants or their representatives and the employers

of personal attendants or their representatives. The committee shall study and report to the Governor on the effects this part has on personal attendants and their employers.

(Added by Stats. 2013, Ch. 374, Sec. 1. Effective January 1, 2014.)

Chapter 2. Domestic Work Employee Rights

(Chapter 2 added by Stats. 2013, Ch. 374, Sec. 1.)

1454. A domestic work employee who is a personal attendant shall not be employed more than nine hours in any workday or more than 45 hours in any workweek unless the employee receives one and one-half times the employee's regular rate of pay for all hours worked over nine hours in any workday and for all hours worked more than 45 hours in the workweek.

(Added by Stats. 2013, Ch. 374, Sec. 1. Effective January 1, 2014.)

Part 5. Civil Air Patrol

(Part 5 added by Stats. 2009, Ch. 242, Sec. 1.)

1500. This part shall be known and may be cited as the Civil Air Patrol Employment Protection Act.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1501. In this part, the following terms have the following meanings:

(a) "Civil Air Patrol leave" means leave requested by an employee who is a volunteer member of the California Wing of the civilian auxiliary of the United States Air Force commonly known as the Civil Air Patrol and who has been duly directed and authorized by the United States Air Force, the California Emergency Management Agency, or other political subdivision of the State of California that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission, within or outside of the state, of the California Wing of the Civil Air Patrol.

(b) "Employee" means a person who may be permitted, required, or directed by an employer for wages or pay to engage in any employment and who has been employed by that employer for at least a 90-day period immediately preceding the commencement of leave, if otherwise eligible for leave.

(c) "Employee benefits" means all benefits, other than salary and wages, provided or made available to an employee by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

(d) "Employer" means any person, partnership, corporation, association, or other business entity; or the State of California, a municipality, or other unit of local government; that employs more than 15 employees.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1502. An employer shall not discriminate against or discharge from employment a member of the Civil Air Patrol because of such membership and shall not hinder or prevent a member from performing service as part of the California Wing of the Civil Air Patrol during an emergency operational mission of the California Wing of the Civil Air Patrol for which a member is entitled to leave under this part.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1503. (a) (1) An employer shall provide not less than 10 days per calendar year of unpaid Civil Air Patrol leave to an employee responding to an emergency operational mission of the California Wing of the Civil Air Patrol. Civil Air Patrol leave for a single emergency operational mission shall not exceed three days, unless an extension of time is granted by the governmental entity that authorized the emergency operational mission, and the extension of the leave is approved by the employer.

(2) Notwithstanding paragraph (1), an employer is not required to grant Civil Air Patrol leave to an employee who is required to respond to either the same or other simultaneous emergency operational mission as a first responder or disaster service worker for a local, state, or federal agency.

(b) (1) An employee shall give the employer as much notice as possible of the intended dates upon which the Civil Air Patrol leave will begin and end.

(2) An employer may require certification from the proper Civil Air Patrol authority to verify the eligibility of the employee for the leave requested or taken. The employer may deny the leave to be taken as Civil Air Patrol leave if the employee fails to provide the required certification.

(c) An employee taking leave under this part shall not be required to exhaust all accrued vacation leave, personal leave, compensatory leave, sick leave, disability leave, and any other leave that may be available to the employee in order to take Civil Air Patrol leave.

(d) Nothing in this act prevents an employer from providing paid leave for leave taken pursuant to this part.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1504. (a) An employer shall, upon expiration of a leave authorized by this part, restore an employee to the position held by him or her when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. An employer may decline to restore an employee as required in this subdivision because of conditions unrelated to the exercise of rights under this part by the employee.

(b) An employer and an employee may negotiate for the employer to maintain the benefits of the employee at the expense of the employer during the leave.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1505. (a) Taking Civil Air Patrol leave under this part shall not result in the loss of an employee benefit accrued before the date on which the leave began.

(b) This part does not affect the obligation of an employer to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this part.

(c) The rights provided under this part shall not be diminished by any collective bargaining agreement or employee benefit plan entered into on or after January 1, 2010.

(d) This part does not affect or diminish the contract rights or seniority status of an employee not entitled to Civil Air Patrol leave.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1506. (a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise a right established by this part.

(b) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against an employee who does any of the following:

(1) Exercises a right provided under this part.

(2) Opposes a practice made unlawful by this part.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

1507. (a) An employee may bring a civil action in the superior court of the appropriate county to enforce this part.

(b) The court may enjoin any act or practice that violates this part and may order any equitable relief necessary and appropriate to redress the violation or to enforce this part.

(Added by Stats. 2009, Ch. 242, Sec. 1. Effective January 1, 2010.)

Part 5.5. Organ And Bone Marrow Donation

(Part 5.5 added by Stats. 2010, Ch. 646, Sec. 1.)

1508. This part shall be known and may be cited as the Michelle Maykin Memorial Donation Protection Act.

(Added by Stats. 2010, Ch. 646, Sec. 1. Effective January 1, 2011.)

1509. For purposes of this part, the following terms have the following meanings:

(a) "Employee" and "employee benefits" have the same meanings set forth in Section 1501.

(b) "Employer" means any person, partnership, corporation, association, or other business entity that employs 15 or more employees.

(Amended by Stats. 2011, Ch. 296, Sec. 195. Effective January 1, 2012.)

1510. (a) Subject to subdivision (b), an employer shall grant to an employee the following paid leaves of absence:

(1) A leave of absence not exceeding 30 business days to an employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(2) A leave of absence not exceeding five business days to an employee who is a bone marrow donor in any one-year period, for the purpose of donating his or her bone marrow to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(b) In order to receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to his or her employer that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(c) Any period of time during which an employee is required to be absent from his or her position by reason of being an organ or bone marrow donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, paid time off, annual leave, or seniority. During any period that an employee takes leave pursuant to subdivision (a), the employer shall maintain and pay for coverage under a group health plan, as defined in Section 5000(b) of the Internal Revenue Code of 1986, for the full duration of the leave, in the same manner the coverage would have been maintained if the employee had been actively at work during the leave period.

(d) This part does not affect the obligation of an employer to comply with a collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this part.

(e) The rights provided under this part shall not be diminished by a collective bargaining agreement or employee benefit plan entered into on or after January 1, 2011.

(f) An employer may require, as a condition of an employee's initial receipt of bone marrow or organ donation leave, that an employee take up to five days of earned but unused sick leave, vacation, or paid time off for bone marrow donation and up to two weeks of earned but unused sick leave, vacation, or paid time off for organ donation, unless doing so would violate the provisions of any applicable collective bargaining agreement.

(g) Notwithstanding existing law, bone marrow and organ donation leave shall not be taken concurrently with any leave taken pursuant to the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) or the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(h) Leave provided for pursuant to this section may be taken in one or more periods, but in no event shall exceed the amount of leave prescribed in subdivision (a).

(Amended by Stats. 2011, Ch. 147, Sec. 1. Effective January 1, 2012.)

1511. An employer shall, upon expiration of a leave authorized by this part, restore an employee to the position held by him or her when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. An employer may decline to restore an employee as required in this section because of conditions unrelated to the exercise of rights under this part by the employee.

(Added by Stats. 2010, Ch. 646, Sec. 1. Effective January 1, 2011.)

1512. (a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise a right established by this part.

(b) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against an employee who does either of the following:

(1) Exercises a right provided under this part.

(2) Opposes a practice made unlawful by this part.

(Added by Stats. 2010, Ch. 646, Sec. 1. Effective January 1, 2011.)

1513. (a) An employee may bring a civil action in the superior court of the appropriate county to enforce this part.

(b) The court may enjoin any act or practice that violates this part and may order any equitable relief necessary and appropriate to redress the violation or to enforce this part.

(Added by Stats. 2010, Ch. 646, Sec. 1. Effective January 1, 2011.)

Part 6. Licensing

(Heading of Part 6 amended by Stats. 1972, Ch. 590.)

Chapter 3. Farm Labor Contractors

(Chapter 3 added by Stats. 1951, Ch. 1746.)

1682. As used in this chapter:

(a) "Person" includes any individual, firm, partnership, association, limited liability company, or corporation.

(b) "Farm labor contractor" designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.

(c) "License" means a license issued by the Labor Commissioner to carry on the business, activities, or operations of a farm labor contractor under this chapter.

(d) "Licensee" means a farm labor contractor who holds a valid and unrevoked license under this chapter.

(e) "Fee" shall mean (1) the difference between the amount received by a labor contractor and the amount paid out by him or her to persons employed to render personal services to, for or under the direction of a third person; (2) any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described above, and shall include the difference between any amount received or to be received by him or her, and the amount paid out by him or her, for or in connection with the rendering of such services.

(Amended by Stats. 1994, Ch. 1010, Sec. 183. Effective January 1, 1995.)

1682.3. "Farm labor contractor" includes any "day hauler." "Day hauler" means any person who is employed by a farm labor contractor to transport, or who for a fee transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person.

(Added by Stats. 1957, Ch. 1704.)

1682.4. "Farm labor contractor" does not include a commercial packing house engaged in both the harvesting and the packing of citrus fruit or soft fruit for a client or customer.

(Added by Stats. 1985, Ch. 662, Sec. 1.)

1682.5. This chapter does not apply to:

(a) A nonprofit corporation or organization with respect to services specified in subdivision (b) of Section 1682, which are performed for its members.

(b) Any person who performs the services specified in subdivision (b) of Section 1682 only within the scope of his employment by the third person on whose behalf he is so acting and not as an independent contractor.

(Added by Stats. 1955, Ch. 1834.)

1682.7. The Labor Commissioner shall ensure that the office maintained in Fresno has suitable facilities and sufficient personnel for the examination and licensing of farm labor contractors and for the processing of complaints against farm labor contractors or any agent of a farm labor contractor.

(Added by Stats. 2000, Ch. 877, Sec. 1. Effective January 1, 2001.)

1682.8. The Labor Commissioner may establish and maintain a Farm Labor Contractor Special Enforcement Unit within the Division of Labor Standards Enforcement office in Fresno of the Department of Industrial Relations for the hiring of additional agents to enforce the provisions of this chapter by revoking, suspending, or refusing to renew farm labor contractors' licenses pursuant to Section 1690.

(Added by Stats. 2000, Ch. 917, Sec. 1. Effective January 1, 2001.)

1683. (a) A person shall not act as a farm labor contractor until a license to do so has been issued to the person by the Labor Commissioner and the license is in full force and effect and in the person's possession. The Labor Commissioner shall provide by regulation a means of issuing duplicate licenses in case of loss of the original license or any other appropriate instances.

(b) (1) A person who violates this section is subject to a civil penalty as follows:

(A) For any initial citation, one hundred dollars ($100) for each farmworker employed by the unlicensed person, plus one hundred dollars ($100) for each calendar day that a violation occurs, for a total penalty not to exceed ten thousand dollars ($10,000).

(B) For a second citation, two hundred dollars ($200) for each farmworker employed by the unlicensed person, plus two hundred dollars ($200) for each calendar day that a violation occurs, for a total penalty not to exceed twenty thousand dollars ($20,000).

(C) For a third or subsequent citation, five hundred dollars ($500) for each farmworker employed by the unlicensed person, plus five hundred dollars ($500) for each calendar day that a violation occurs, for a total penalty not to exceed fifty thousand dollars ($50,000).

(2) If, upon inspection or investigation, the Labor Commissioner determines that a person has violated this section, the Labor Commissioner shall issue a citation. The procedures for issuing, contesting, and enforcing citations or civil penalties issued by the Labor Commissioner for a violation of this section are the same as those described in Section 1197.1.

(3) The civil penalties collected pursuant to this section shall be deposited into the Farmworker Remedial Account and shall be available, upon appropriation by the Legislature, for purposes of this chapter.

(4) The civil penalties provided for in this section are in addition to any other penalty provided by law.

(c) For purposes of this section, "license" includes a letter of authorization issued by the Labor Commissioner pursuant to paragraph (2) of subdivision (a) of Section 1695.7.

(Amended by Stats. 2012, Ch. 857, Sec. 1. Effective January 1, 2013.)

1684. (a) The Labor Commissioner shall not issue to any person a license to act as a farm labor contractor, nor shall the Labor Commissioner renew that license, until all of the following conditions are satisfied:

(1) The person has executed a written application in a form prescribed by the Labor Commissioner, subscribed and sworn to by the person, and containing all of the following:

(A) A statement by the person of all facts required by the Labor Commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the person proposes to conduct operations as a farm labor contractor if the license is issued.

(B) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the proposed operation as a farm labor contractor, together with the amount of their respective interests.

(C) A declaration consenting to the designation by a court of the Labor Commissioner as an agent available to accept service of summons in any action against the licensee if the licensee has left the jurisdiction in which the action is commenced or otherwise has become unavailable to accept service.

(D) The names and addresses of all persons who in the previous calendar year performed any services described in subdivision (b) of Section 1682 within the scope of his or her employment by the licensee on whose behalf he or she was acting, unless the person was employed as an independent contractor.

(2) The Labor Commissioner, after investigation, is satisfied as to the character, competency, and responsibility of the person.

(3) (A) The person has deposited with the Labor Commissioner a surety bond in an amount based on the size of the person's annual payroll for all employees, as follows:

(i) For payrolls up to five hundred thousand dollars ($500,000), a twenty-five-thousand-dollar ($25,000) bond.

(ii) For payrolls of five hundred thousand dollars ($500,000) to two million dollars ($2,000,000), a fifty-thousand-dollar ($50,000) bond.

(iii) For payrolls greater than two million dollars ($2,000,000), a seventy-five-thousand-dollar ($75,000) bond.

(B) For purposes of this paragraph, the Labor Commissioner shall require documentation of the size of the person's annual

payroll, which may include, but is not limited to, information provided by the person to the Employment Development Department, the Franchise Tax Board, the Division of Workers' Compensation, the insurer providing the licensee's workers' compensation insurance, or the Internal Revenue Service.

(C) If the contractor has been the subject of a final judgment in a year in an amount equal to or greater than the amount of the bond required, he or she shall be required to deposit an additional bond within 60 days.

(D) All bonds required under this chapter shall be payable to the people of the State of California and shall be conditioned upon the farm labor contractor's compliance with all the terms and provisions of this chapter and subdivisions (j) and (k) of Section 12940 of, and Sections 12950 and 12950.1 of, the Government Code, and payment of all damages occasioned to any person by failure to do so, or by any violation of this chapter or of subdivision (j) or (k) of Section 12940 of, or of Section 12950 or 12950.1 of, the Government Code, or any violation of Title VII of the Civil Rights Act of 1964 (Public Law 88-352), or false statements or misrepresentations made in the procurement of the license. The bond shall also be payable for interest on wages and for any damages arising from violation of orders of the Industrial Welfare Commission, and for any other monetary relief awarded to an agricultural worker as a result of a violation of this code or of subdivision (j) or (k) of Section 12940 of, or Section 12950 or 12950.1 of, the Government Code, or any violation of Title VII of the Civil Rights Act of 1964 (Public Law 88-352).

(4) The person has paid to the Labor Commissioner a license fee of five hundred dollars ($500) plus a filing fee of ten dollars ($10). However, when a timely application for renewal is filed, the ten-dollar ($10) filing fee is not required. The license fee shall increase by one hundred dollars ($100), to six hundred dollars ($600), on January 1, 2015. The amount attributable to this increase shall be expended by the Labor Commissioner to fund the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit. The Labor Commissioner shall deposit one hundred fifty dollars ($150) of each licensee's annual license fee into the Farmworker Remedial Account. Funds from this account shall be disbursed by the Labor Commissioner only to persons determined by the Labor Commissioner to have been damaged by any licensee if the damage exceeds the amount of the licensee's bond or the surety fails to pay the full amount of the licensee's bond, or to persons determined by the Labor Commissioner to have been damaged by an unlicensed farm labor contractor. In making these determinations, the Labor Commissioner shall disburse funds from the Farmworker Remedial Account to satisfy claims against farm labor contractors or unlicensed farm labor contractors, which shall also include interest on wages and any damages arising from the violation of orders of the Industrial Welfare Commission, for any other monetary relief awarded to an agricultural worker as a result of a violation of this code, and for all damages arising from any violation of subdivision (j) or (k) of Section 12940 of, or of Section 12950 or 12950.1 of, the Government Code, or any violation of Title VII of the Civil Rights Act of 1964 (Public Law 88-352). The Labor Commissioner may disburse funds from the Farmworker Remedial Account to farm labor contractors, for payment of farmworkers, when a contractor is unable to pay farmworkers due to the failure of a grower or packer to pay the contractor. Any disbursed funds subsequently recovered by the Labor Commissioner pursuant to Section 1693, or otherwise, shall be returned to the Farmworker Remedial Account.

(5) The person has taken a written examination that demonstrates an essential degree of knowledge of the current laws and administrative regulations concerning farm labor contractors as the Labor Commissioner deems necessary for the safety and protection of farmers, farmworkers, and the public, including the identification and prevention of sexual harassment in the workplace. To successfully complete the examinations, the person must correctly answer at least 85 percent of the questions posed. The examination period shall not exceed four hours. The examination may only be taken a maximum of three times in a calendar year. The examinations shall include a demonstration of knowledge of the current laws and regulations regarding wages, hours, and working conditions, penalties, employee housing and transportation, collective bargaining, field sanitation, and safe work practices related to pesticide use, including all of the following subjects:

(A) Field reentry regulations.

(B) Worker pesticide safety training.

(C) Employer responsibility for safe working conditions.

(D) Symptoms and appropriate treatment of pesticide poisoning.

(6) The person has registered as a farm labor contractor pursuant to the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801 et seq.), when registration is required pursuant to federal law, and that information is provided by the person to the Labor Commissioner.

(7) Each of the person's employees has registered as a farm labor contractor employee pursuant to the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801 et seq.) if that registration is required pursuant to federal law, and that information is provided by the person to the Labor Commissioner.

(8) (A) The person has executed a written statement, that has been provided to the Labor Commissioner, attesting that the person's supervisorial employees, including any supervisor, crewleader, mayordomo, foreperson, or other employee whose duties include the supervision, direction, or control of agricultural employees, have been trained at least once for at least two hours each calendar year in the prevention of sexual harassment in the workplace, and that all new nonsupervisorial employees, including agricultural employees, have been trained at the time of hire, and that all nonsupervisorial employees, including agricultural employees, have been trained at least once every two years in identifying, preventing, and reporting sexual harassment in the workplace.

(B) Sexual harassment prevention training shall consist of training administered by a licensee or appropriate designee of the licensee.

(C) Sexual harassment prevention training shall include, at a minimum, components of the following as consistent with Section 12950 of the Government Code:

(i) The illegality of sexual harassment.

(ii) The definition of sexual harassment under applicable state and federal law.

(iii) A description of sexual harassment, utilizing examples.

(iv) The internal complaint process of the employer available to the employee.

(v) The legal remedies and complaint process available through the Department of Fair Employment and Housing.

(vi) Directions for how to contact the Department of Fair Employment and Housing.

(vii) The protection against retaliation provided under current law.

(D) The trainer may use the text of the Department of Fair Employment and Housing's pamphlet DFEH-185, "Sexual Harassment" as a guide to training, or may use other written material or other training resources covering the information required in subparagraph (C).

(E) At the conclusion of the training, the trainer shall provide the employee with a copy of the Department of Fair Employment and Housing's pamphlet DFEH-185, and a record of the training on a form provided by the Labor Commissioner that includes the name of the trainer and the date of the training.

(F) The licensee shall keep a record with the names of all employees who have received sexual harassment training for a period of three years.

(b) The Labor Commissioner shall consult with the Director of Pesticide Regulation, the Department of the California Highway Patrol, the Department of Housing and Community Development, the Employment Development Department, the Department of Fair Employment and Housing, the Department of Food and Agriculture, the Department of Motor Vehicles, and the Division of Occupational Safety and Health in preparing the examination required by paragraph (5) of subdivision (a) and the appropriate educational materials pertaining to the matters included in the examination, and may charge a fee of not more than two hundred dollars ($200) to cover the cost of administration of the examination.

(c) The person shall also enroll and participate in at least nine hours of relevant educational classes each year. The classes shall include at least one hour of sexual harassment prevention training. The classes shall be chosen from a list of approved classes prepared by the Labor Commissioner, in consultation with the persons and entities listed in subdivision (b) and county agricultural commissioners.

(d) The Labor Commissioner may renew a license without requiring the applicant for renewal to take the examination specified in paragraph (5) of subdivision (a) if the Labor Commissioner finds that the applicant meets all of the following criteria:

(1) Has satisfactorily completed the examination during the immediately preceding two years.

(2) Has not during the preceding year been found to be in violation of any applicable laws or regulations including, but not limited to, Division 7 (commencing with Section 12501) of the Food and Agricultural Code, subdivisions (j) and (k) of Section 12940 of, and Section 12950 or 12950.1 of, the Government Code, Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code, Division 2 (commencing with Section 200), Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300) of this code, and Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code.

(3) Has, for each year since the license was obtained, enrolled and participated in at least eight hours of relevant, educational classes, chosen from a list of approved classes prepared by the Labor Commissioner.

(4) Has complied with all other requirements of this section.

(Amended by Stats. 2016, Ch. 31, Sec. 180. Effective June 27, 2016.)

1684.3. Whenever an application for a license or renewal is made, and application processing pursuant to this chapter has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional license valid for a period not exceeding 90 days, and subject, where appropriate, to the automatic and summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal shall meet the requirements of Section 1684.

(Added by Stats. 1984, Ch. 557, Sec. 2.)

1684.5. The Labor Commissioner shall quarterly submit to the Department of the California Highway Patrol a list of all licensees.

(Amended by Stats. 2000, Ch. 917, Sec. 3. Effective January 1, 2001.)

1685. No license to operate as a farm labor contractor shall be granted:

(a) To any person who sells or proposes to sell intoxicating liquors in a building or on premises where he or she operates or proposes to operate as a farm labor contractor.

(b) To a person whose license has been revoked within three years from the date of application.

(c) To a person who, within the preceding three years, has been found by a court or an administrative agency to have committed sexual harassment of an employee, or who, within the preceding three years, employed any supervisor, crewleader, mayordomo, foreperson, or any other employee of the applicant whose duties include the supervision, direction, or control of any agricultural worker whom the applicant knew or should have known has been found by a court or an administrative agency, within the preceding three years of his or her employment with the applicant, to have committed sexual harassment of an employee. A person shall be deemed not to have knowledge under this subdivision that any supervisor, crewleader, mayordomo, foreperson, or any other employee has been found by a court or any administrative agency to have committed sexual harassment if that supervisor, crewleader, mayordomo, foreperson, or any other employee executes a statement on a form provided by the Labor Commissioner that includes the following statement: "I have not been found to have committed sexual harassment by any court or any administrative agency within the preceding three years." This subdivision shall not apply until the Labor Commissioner prepares the form and makes it available on the division's Internet Web site.

(Amended by Stats. 2014, Ch. 750, Sec. 2. Effective January 1, 2015.)

1686. The Labor Commissioner, upon proper notice and hearing, may refuse to grant a license. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code and the commissioner shall have all of the powers granted therein.

(Added by Stats. 1951, Ch. 1746.)

1687. (a) Each laminated license shall contain, on the face thereof, all of the following:

(1) The name and address of the licensee and the fact that the licensee is licensed to act as a farm labor contractor for the period upon the face of the license only.

(2) The number, date of issuance, and date of expiration of the license.

(3) The amount of the surety bond deposited by the licensee.

(4) The fact that the license may not be transferred or assigned.

(5) A picture of the licensee taken at the time of application.

(b) The license shall be similar in size and format to a driver's license issued by the Department of Motor Vehicles, and shall contain a hologram and a signature to verify authenticity. The cost of the hologrammed license shall be appropriated from the license fee.

(c) The license shall contain on the back thereof the definition of a farm labor contractor, as defined by subdivision (b) of Section 1682.

(Amended by Stats. 2000, Ch. 917, Sec. 4. Effective January 1, 2001.)

1688. The license when first issued shall run to the next birthday of the applicant, and each license shall then be renewed within the 30 days preceding the licensee's birthday and shall run from birthday to birthday. In case the applicant is a partnership or corporation, the license for a partnership shall be renewed within the 30 days preceding the birthday of the oldest partner, and the license for a corporation shall be renewed within the 30 days preceding the anniversary of the date the corporation was lawfully formed. Renewal shall require the filing of an application for renewal, a renewal bond, and the payment of the annual license fee, but the Labor Commissioner may demand that a new application or a new bond be submitted.

(Amended by Stats. 1982, Ch. 517, Sec. 301.)

1689. All applications for renewal shall state the names and addresses of all persons, except bona fide employees on stated salaries, financially interested either as partners, associates or profit sharers in the operation of the farm labor contractor.

(Amended by Stats. 1967, Ch. 125.)

1690. The Labor Commissioner may revoke, suspend, or refuse to renew any license if it is shown that any of the following have occurred:

(a) The licensee or any agent of the licensee has violated or failed to comply with any of the provisions of this chapter.

(b) The licensee has made any misrepresentations or false statements in his or her application for a license.

(c) The conditions under which the license was issued have changed or no longer exist.

(d) The licensee, or any agent of the licensee, has violated, or has willfully aided or abetted any person in the violation of, or failed to comply with, any law of the State of California regulating the employment of employees in agriculture, the payment of wages to farm employees, or the conditions, terms, or places of employment affecting the health and safety of farm employees, which is applicable to the business, activities, or operations of the licensee in his or her capacity as a farm labor contractor.

(e) The licensee, or any agent of the licensee, has failed to comply with any provisions of the Vehicle Code pertaining to a farm labor vehicle, as described in Section 322 of the Vehicle Code, under the licensee's control, or has allowed a farm labor vehicle under his or her control to be operated by a driver without a valid driver's license and certificate required pursuant to Section 12519 of the Vehicle Code.

(f) The licensee has been found, by a court or the Secretary of Labor, to have violated any provision of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sec. 1801 et seq.), provided that the licensee is required to register as a farm labor contractor pursuant to federal law.

(g) The licensee has been found by a court or an administrative agency to have committed sexual harassment of an employee, or has employed any supervisor, crewleader, mayordomo, foreperson, or any other employee of the licensee whose duties include the supervision, direction, or control of any agricultural worker on behalf of the licensee, whom the licensee knew or should have known has been found by a court or an administrative agency, within the preceding three years, to have committed sexual harassment of an employee. A licensee shall be deemed not to have knowledge under this subdivision that any supervisor, crewleader, mayordomo, foreperson, or any other employee has been found by a court or any other administrative agency to have committed sexual harassment if that supervisor, crewleader, mayordomo, foreperson, or any other employee executes a statement on a form provided by the Labor Commissioner that includes the following statement: "I have not been found to have committed sexual harassment by any court or any administrative agency within the preceding three years." This subdivision shall not apply until the Labor Commissioner prepares the form and makes it available on the division's Internet Web site.

(Amended by Stats. 2014, Ch. 750, Sec. 3. Effective January 1, 2015.)

1690.1. (a) (1) If a licensee fails to remit the proper amount of worker contributions required by Chapter 4 (commencing with Section 901) of Part 1 of Division 1 of the Unemployment Insurance Code, or the Employment Development Department has made an assessment for unpaid worker contributions against the licensee that is final, the Labor Commissioner shall, upon written notice by the Employment Development Department, refuse to issue or renew the license of that licensee until the licensee has fully paid the amount of delinquency for the unpaid worker contributions.

(2) The Labor Commissioner shall not, however, refuse to renew the license of a licensee under this section until the assessment for unpaid worker contributions is final and unpaid, and the licensee has exhausted, or failed to seek, his or her right of administrative review of that final assessment, pursuant to Chapter 4 (commencing with Section 901) of Part 1 of Division 1 of the Unemployment Insurance Code.

(b) If any licensee fails to remit the amounts required by Section 227, the Labor Commissioner shall refuse to issue or renew the license of the licensee until the delinquent amount has been paid in full.

(Amended by Stats. 2014, Ch. 750, Sec. 4. Effective January 1, 2015.)

1691. (a) If any licensee has been subject to two or more final judgments by a court for failure to pay wages due with respect to his or her agricultural employees within a five-year period, the Labor Commissioner shall suspend for one year the license of the licensee. The Labor Commissioner shall maintain a telephone information line for the purpose of advising potential or actual employees of farm labor contractors regarding the compliance of individual farm labor contractors with applicable laws and regulations.

(b) For purposes of this section, a "serious violation" shall have the same meaning as provided in paragraph (1) of subdivision (a) of Section 6130 of Title 3 of the California Code of Regulations.

(Amended by Stats. 1992, Ch. 1349, Sec. 2. Effective January 1, 1993.)

1692. Before revoking or suspending any license, the Labor Commissioner shall afford the holder of such license an opportunity to be heard in person or by counsel. The proceedings shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(Added by Stats. 1951, Ch. 1746.)

1692.5. A licensee whose license is suspended or revoked pursuant to the provisions of this chapter shall immediately surrender such license to the Labor Commissioner.

(Added by Stats. 1970, Ch. 448.)

1693. The Labor Commissioner and the deputies and representatives authorized by the Labor Commissioner in writing may take assignments of actions on the bond against licensees by persons damaged and may prosecute such actions on behalf of persons who, in the judgment of the Labor Commissioner,

are financially unable to employ counsel, in the same manner that claims are prosecuted under Section 98.

(Amended by Stats. 1982, Ch. 517, Sec. 304.)

1694. If a licensee has departed from the state or has left the jurisdiction in which a violation of this chapter is alleged to have occurred with intent to defraud creditors or to avoid service of summons in any action brought under this chapter, service shall be made upon the surety as prescribed in the Code of Civil Procedure. A copy of the summons shall be mailed to the licensee at the last known post office address of his or her residence, as shown by the records of the Labor Commissioner. Service is complete as to the licensee, after mailing, at the expiration of the time prescribed by the Code of Civil Procedure for service of summons in the particular court in which suit is brought.

(Amended by Stats. 2014, Ch. 750, Sec. 5. Effective January 1, 2015.)

1695. (a) Every licensee shall do all of the following:

(1) Carry his or her license and proof of registration issued pursuant to paragraph (8) with him or her at all times and exhibit the same to all persons with whom he or she intends to deal in his or her capacity as a farm labor contractor prior to so dealing.

(2) File at the United States Post Office serving the address of the licensee, as noted on the face of his or her license, with the office of the Labor Commissioner, and with the agricultural commissioner of the county or counties in which the labor contractor has contracted with a grower, a correct change of address immediately upon each occasion the licensee permanently moves his or her address. The address shall also be the mailing address for purposes of notice required by the Labor Code or by any other applicable statute or regulations respecting service by mail.

(3) Promptly when due, pay or distribute to the individuals entitled thereto, all moneys or other things of value entrusted to the licensee by any third person for this purpose.

(4) Comply on his or her part with the terms and provisions of all legal and valid agreements and contracts entered into between the licensee in his or her capacity as a farm labor contractor and third persons.

(5) Have available for inspection by his or her employees and by the grower with whom he or she has contracted a written statement in English and Spanish showing the rate of compensation he or she receives from the grower and the rate of compensation he or she is paying to his or her employees for services rendered to, for, or under the control of the grower. Upon written request, the statement shall be provided to a current or former employee or the grower within 21 calendar days. A licensee who fails to comply with this paragraph is subject to a civil penalty of seven hundred fifty dollars ($750) recoverable by the employee or the grower.

(6) Take out a policy of insurance with any insurance carrier authorized to do business in the State of California in an amount satisfactory to the commissioner, which insures the licensee against liability for damage to persons or property arising out of the licensee's operation of, or ownership of, any vehicle or vehicles for the transportation of individuals in connection with his or her business, activities, or operations as a farm labor contractor.

(7) Have displayed prominently at the site where the work is to be performed and on all vehicles used by the licensee or his or her employees or agents for the transportation of employees the rate of compensation the licensee is paying to his or her employees for their services, printed in both English and Spanish and in lettering of a size to be prescribed by the Department of Industrial Relations.

(8) Register annually with the agricultural commissioner of the county or counties in which the labor contractor has contracted with a grower.

(9) Provide information and training on applicable laws and regulations governing worker safety, including the requirements of Article 10.5 (commencing with Section 12980) of Chapter 2 of Division 7 of the Food and Agricultural Code, sexual harassment, or regulating the terms and conditions of agricultural employment, to each crewleader, foreperson, or other employee whose duties include the supervision, direction, or control of any agricultural worker on behalf of a licensee, or pursuant to, a contract or agreement for agricultural services entered into with a licensee.

(b) The board of supervisors of a county may establish fees to be charged each licensee for the recovery of the actual costs incurred by commissioners in the administration of registrations and change of address and the issuance of proofs of registration.

(Amended by Stats. 2014, Ch. 750, Sec. 6. Effective January 1, 2015.)

1695.5. (a) Every farm labor contractor, upon request of any agricultural grower with whom he or she has a contract to supply farmworkers, shall immediately furnish the grower with a payroll list of all the contractor's employees working for the grower.

(b) The payroll list shall be on a uniform form approved by the Labor Commissioner, which shall include, but not be limited to, the employee's name, social security number, permanent and temporary address, telephone number, and length of employment with the grower.

(c) The requirements of this section are in addition to any requirements of federal law, including the federal Migrant and Seasonal Agricultural Worker Protection Act (Chapter 20 (commencing with Section 1801), Title 29, United States Code).

(Amended by Stats. 1988, Ch. 1000, Sec. 4.)

1695.55. (a) Every person acting in the capacity of a farm labor contractor shall provide any grower with whom he or she has contracted to supply farmworkers a payroll record for each farmworker providing labor under the contract. The payroll record shall include a disclosure of the net and gross wages, total hours worked, and total hourly and piece rate earnings for each farmworker.

(b) Each grower entering into a contract with a farm labor contractor shall retain a copy of the payroll record provided by the contractor for a period of three years after the contract has ended.

(Amended by Stats. 2014, Ch. 750, Sec. 7. Effective January 1, 2015.)

1695.6. No person shall knowingly enter into an agreement for the services of a farm labor contractor who is not licensed under this chapter.

(Added by Stats. 1976, Ch. 803.)

1695.7. (a) (1) Prior to entering into any contract or agreement to supply agricultural labor or services to a grower, a farm labor contractor shall first provide to the grower a copy of his or her current valid state license. A failure to do so is a violation of this chapter. The grower shall keep a copy of the license for a period of three years following the termination of the contract or agreement.

(2) In the event that the licensee or prospective licensee has fulfilled all the requirements for a license, but the Labor Commissioner has not been able to timely issue or renew a license, the Labor Commissioner shall issue to the person applying for a license, or renewal of a license, a letter of authorization permitting that person to operate or continue to operate as a farm labor contractor. For purposes of this section, a "valid state license"

shall include a letter of authorization issued pursuant to this paragraph.

(3) (A) No grower shall enter into a contract or agreement with a person acting in the capacity of a farm labor contractor who fails to provide a copy of his or her license. A grower has an affirmative obligation to inspect the license of any person contracted as a farm labor contractor, a copy of whose license is provided to the grower pursuant to paragraph (1), and to verify that the license is valid. The grower shall request verification from the license verification unit by the close of the third business day following the day on which the farm labor contractor is engaged. The grower may be supplied services by the farm labor contractor and shall not be liable under this section for an invalid license while awaiting verification from the verification unit. The verification received from the license verification unit shall serve as conclusive evidence of the grower's compliance with this subparagraph. The verification shall be valid until the farm labor contractor's license expires. Failure to comply with this subparagraph is a violation of this chapter.

(B) A farm labor contractor has an affirmative obligation to inspect the license of any person contracted by the farm labor contractor who is acting in the capacity of a farm labor contractor a copy of whose license is provided to the farm labor contractor pursuant to Section 1695.9, and to verify that the license is valid. The farm labor contractor shall request verification from the license verification unit by the close of the third business day following the day on which the individual who is acting as the farm labor contractor is engaged. The farm labor contractor may be supplied services by the acting farm labor contractor and shall not be liable under this section for an invalid license while awaiting verification from the verification unit. The verification received from the license verification unit shall serve as conclusive evidence of the farm labor contractor's compliance with this subparagraph. The verification shall be valid until the individual's license expires. Failure to comply with this subparagraph is a violation of this chapter.

(C) If a determination is made by the Labor Commissioner that the verification system is inoperable, no grower or farm labor contractor shall be liable under this section until seven business days after the Labor Commissioner determines the system is operable and has made public notice to affected parties.

(4) (A) If a contract or agreement entered into with a farm labor contractor extends beyond the expiration date of his or her license, or extends beyond the date contained in the letter of authorization to operate, the farm labor contractor shall provide to the grower, upon renewal of the license or issuance of the letter of authorization a copy of his or her current valid renewed license or a copy of a letter of authorization issued by the Labor Commissioner. In the event the farm labor contractor's license is not renewed, the farm labor contractor shall notify the grower within three days.

(B) If a contract or agreement entered into by a farm labor contractor with another farm labor contractor extends beyond the expiration date of his or her license, or extends beyond the date contained in the letter of authorization to operate, the other farm labor contractor shall provide to the farm labor contractor, upon renewal of the license or issuance of the letter of authorization a copy of his or her current valid renewed license or a copy of a letter of authorization issued by the Labor Commissioner. In the event the license of a person contracted by a farm labor contractor who is acting as farm labor contractor is not renewed, the person shall notify the farm labor contractor within three days.

(b) A failure by a farm labor contractor to provide a copy of his or her license to the grower shall not constitute a defense against liability under this section for a grower who subsequently fails to comply with the requirements of subparagraph (A) of paragraph (3) of subdivision (a). A failure by a person acting as a farm labor contractor who is contracted by a farm labor contractor to provide a copy of his or her license to the farm labor contractor shall not constitute a defense against liability under this section for a farm labor contractor who subsequently fails to comply with the requirements of subparagraph (B) of paragraph (3) of subdivision (a).

(c) (1) Any person who acts in the capacity of a farm labor contractor without first securing a license or while his or her license has been suspended or revoked is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or imprisonment in the county jail for not more than six months, or both, and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697.

(2) Any grower or farm labor contractor who enters into a contract or agreement in violation of this section shall be subject to a civil action by an aggrieved worker for any claims arising from the contract or agreement that are a direct result of any violation of any state law regulating wages, housing, pesticides, or transportation committed by the unlicensed farm labor contractor. The court shall grant a prevailing plaintiff reasonable attorney's fees and costs.

(3) On or after January 1, 2003, any grower, farm labor contractor, or other person acting either individually or as an officer, agent, or employee of any grower or farm labor contractor who knowingly and willfully fails to pay, or causes the failure to pay, wages as set forth in subdivision (b) of Section 1199, or any higher wages that have been agreed to, is guilty of a misdemeanor punishable as set forth in subdivision (f). However, if the prosecutor elects to prosecute any grower, farm labor contractor, or other person pursuant to this paragraph and subdivision (f), multiple failures to pay wages within a single payroll and in a single pay period shall constitute one violation.

(4) Any aggrieved worker who, claims a violation of this section, may bring a civil action for injunctive relief and lost wages as provided in Section 218, and, upon prevailing, shall recover reasonable attorney's fees and costs.

(d) As used in this section:

(1) "Business day" means any day on which the offices of the license verification unit are open to the public for the conducting of business.

(2) "Grower" means any person who owns or leases land used for the planting, cultivation, production, harvesting, or packing of any farm products, if he or she hires or uses persons acting as farm labor contractors, and includes a packing shed or a person or entity who farms the land on behalf of the land owner, whether or not he or she owns or leases the land.

(3) "Inspect," with regard to inspecting a license, means to examine the license to determine whether it reasonably appears on its face to be genuine.

(4) "License verification unit" means the Farm Labor Contractor License Verification Unit established pursuant to subdivision (e).

(5) "Verify," with respect to verifying a license, means to contact by telephone, facsimile, website, electronic mail, or other means as determined by the Labor Commissioner, the license verification unit to confirm the validity of a license and to record

in the requester's files the unique verification number provided by the license verification unit to document that the requester confirmed the validity of the license of the farm labor contractor with whom he or she has entered into a contract or agreement to supply services.

(e) The Labor Commissioner shall establish and maintain a Farm Labor Contractor License Verification Unit commencing no later than July 1, 2002. The license verification unit shall, upon the request of a grower or farm labor contractor, certify the status of a state license issued to a farm labor contractor. The license verification unit shall assign a unique verification number to the request and the unit shall within 24 hours send by mail, or, if available, by facsimile or electronic mail, confirmation that will serve as conclusive evidence of compliance with the verification requirements of this section. The obligation under this section to verify licenses shall not become operative and the penalties for failure to verify a license shall not be applicable until three months after the license verification unit becomes operational, as certified by the State Auditor.

(f) (1) On or after January 1, 2003, a violation of paragraph (3) of subdivision (c) is a misdemeanor and is punishable as provided in subdivision (a) of Section 1697, except that the fine portion of the penalty shall be as follows:

(A) Upon conviction for a first violation, by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697. Upon conviction, the Labor Commissioner shall revoke the defendant's license and the defendant shall be ineligible for a license for a period of one year from the date of revocation.

(B) Upon a conviction for a violation committed within three years after a conviction for a prior violation, by a fine of not less than ten thousand dollars ($10,000) and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697. Upon a second conviction, the Labor Commissioner shall revoke the defendant's license and the defendant shall be ineligible for a license for a period of two years from the date of revocation.

(C) Upon a conviction for a violation committed within five years after a second conviction pursuant to subparagraph (B), by a fine of not less than twenty-five thousand dollars ($25,000), and is subject to other sanctions under this chapter, including subdivisions (b) and (c) of Section 1697. Upon a third conviction, the Labor Commissioner shall revoke the defendant's license and the defendant shall not thereafter be eligible to obtain a license.

(2) If a person is prosecuted under this subdivision, that person may not be prosecuted under any other law if the prosecution would be based upon the same set of facts as the prosecution under this subdivision.

(g) A farm labor contractor, a person contracted by a farm labor contractor who is acting in the capacity of a farm labor contractor, or an employer of a farm labor contractor is subject to Section 98.6 and 1102.5.

(Amended by Stats. 2001, Ch. 157, Sec. 1. Effective January 1, 2002.)

1695.8. (a) No person whose license was suspended, revoked, or denied renewal by the Labor Commissioner shall perform any activity or service specified in subdivision (b) of Section 1682 or in Section 1682.3 to, for, or under the direction of a farm labor contractor, whether as an employee, independent contractor, or otherwise, for three years after the license is suspended, revoked, or denied renewal, or until the license is reinstated, whichever first occurs.

(b) No farm labor contractor shall knowingly contract with or use any person specified in subdivision (a), whether as an employee, independent contractor, or otherwise, to perform an activity or service specified in subdivision (b) of Section 1682 or in Section 1682.3 for three years after the license of the person is suspended, revoked, or denied renewal, or until the license is reinstated, whichever first occurs.

(Added by Stats. 2001, Ch. 157, Sec. 2. Effective January 1, 2002.)

1695.9. Any person contracted by a farm labor contractor who is acting in the capacity of a farm labor contractor shall first provide to the farm labor contractor a copy of his or her current valid state license. A farm labor contractor is responsible for ensuring that every person who is performing farm labor contracting activities on behalf of the farm labor contractor has obtained a farm labor contractor license as required by Section 1683 prior to the person's engagement in any activity described in subdivision (b) of Section 1682. A farm labor contractor who utilizes the services of another farm labor contractor who is not his or her employee shall also comply with the provisions of this chapter. The farm labor contractor is responsible for any violations of this chapter committed by his or her employee, whether or not the employee has registered as required by this chapter. The farm labor contractor shall keep a copy of the license or licenses for a period of three years following the termination of the contract or agreement.

(Added by Stats. 2001, Ch. 157, Sec. 3. Effective January 1, 2002.)

1696. No licensee shall:

(1) Make any misrepresentation or false statement in his application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent, or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent, or misleading information concerning the terms or conditions or existence of employment at any place or places, or by any person or persons, or of any individual or individuals.

(3) Send or transport any worker to any place where the labor contractor knows a strike or lockout exists, without notifying the worker that such conditions exist.

(4) Do any act in his capacity as a farm labor contractor, or cause any act to be done, which constitutes a crime involving moral turpitude, or the effect of which causes any act to be done which constitutes a crime involving moral turpitude under any law of the State of California.

(Added by Stats. 1951, Ch. 1746.)

1696.2. All vehicles used by a licensee or his or her employees or agents for the transportation of individuals in his or her operations as a farm labor contractor shall have displayed prominently at the entrance of the vehicle the name of the farm labor contractor and the number of his or her license as issued by the Labor Commissioner pursuant to this chapter.

(Amended by Stats. 2014, Ch. 750, Sec. 8. Effective January 1, 2015.)

1696.3. Any farm labor contractor or person employed by a farm labor contractor who operates a bus or truck in the transportation of individuals in connection with the business, activities, or operations of a farm labor contractor shall be licensed as required by Section 12519 of the Vehicle Code.

(Amended by Stats. 1963, Ch. 209.)

1696.4. (a) All vehicles defined in Section 322 of the Vehicle Code, including those described in Section 1696.3, used by a farm labor contractor for the transportation of individuals in his or her operations as a farm labor contractor, including, but not limited to, vehicles not owned by that contractor, shall be registered

with the Labor Commissioner. The registration shall include the name of the owner and driver of the vehicle, and the license number and description of the vehicle. The Labor Commissioner shall require, as a condition of registration, that the farm labor contractor submit evidence showing that the contractor has in effect an insurance policy applicable to the vehicle, as required by Section 1695.

(b) Commencing on April 1, 2000, and quarterly thereafter, the Labor Commissioner shall provide the Commissioner of the California Highway Patrol with a list of all vehicles registered pursuant to subdivision (a).

(Amended by Stats. 1999, Ch. 556, Sec. 1. Effective September 29, 1999.)

1696.5. Every licensee shall, at the time of each payment of wages, which shall be not less often than once every week as required by Section 205 of this code, furnish each of the workers employed by him or her either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing that complies with the requirements of subdivision (a) of Section 226 and shows in detail each deduction made from the wages.

(Amended by Stats. 2014, Ch. 750, Sec. 9. Effective January 1, 2015.)

1696.6. (a) No licensee shall recruit or solicit and transport an employee for farmwork unless he has first obtained, either orally or in writing, a bona fide order for such employment.

(b) Any farm labor contractor who recruits or solicits a farmworker without a bona fide order and induces him to be transported to a proposed jobsite and does not then provide employment for him shall pay wages to such farmworker at the agreed rate of pay for the job to which he was being transported and for the elapsed time from the point of departure with return to the same place.

(Added by Stats. 1965, Ch. 1979.)

1696.8. (a) The director shall establish a Farm Labor Contractor Enforcement Unit. The unit shall develop a program to provide technical assistance to a district attorney's office that establishes a local farm labor contractor enforcement unit. A local farm labor contractor enforcement unit established pursuant to this section shall, whenever possible, coordinate its enforcement efforts with the Rural Crime Prevention Program in its jurisdiction, if any, established pursuant to Section 14171 of the Penal Code. Any funds appropriated to the department for purposes of this section shall be administered and allocated by the director.

(b) A local farm labor contractor enforcement unit that receives technical assistance pursuant to this section shall concentrate enhanced prosecution efforts and resources on the prosecution of farm labor contractors who violate a state law regulating wages. For purposes of this subdivision, "enhanced prosecution efforts and resources" include, but are not limited to, all of the following:

(1) "Vertical" prosecutorial representation, whereby the prosecutor who makes the initial filing or appearance performs all subsequent court appearances on a particular case through its conclusion, including the sentencing phase.

(2) Assignment of highly qualified investigators and prosecutors to farm labor enforcement cases.

(3) Significant reduction of caseloads for investigators and prosecutors assigned to farm labor enforcement cases.

(Added by Stats. 2001, Ch. 157, Sec. 4. Effective January 1, 2002.)

1697. (a) Any person who violates this chapter, or who causes or induces another to violate this chapter, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than six months, or both.

(b) Any employee aggrieved by any violation of this chapter, other than acts and conduct also proscribed by Sections 1153, 1154, and 1155, may do all of the following:

(1) Bring a civil action for injunctive relief or damages, or both, against a farm labor contractor or unlicensed farm labor contractor who violates this chapter and, upon prevailing, shall recover reasonable attorney's fees and costs, including expert witness fees.

(2) Enforce the liability on the farm labor contractor's bond.

(c) Any farm labor contractor who engages in farm labor contracting activities after his or her license has been suspended, revoked, or denied reissuance is guilty of an offense punishable by a fine of not less than ten thousand dollars ($10,000), or by imprisonment for not less than six months and not more than one year, or both.

(Amended by Stats. 2014, Ch. 750, Sec. 10. Effective January 1, 2015.)

1697.1. (a) No person shall make, or cause to be made, false, fraudulent, or misleading representations that employment in the growing or producing of farm products, or an employee benefit related to that employment, will be jeopardized unless an individual or his or her family members pay a fee or other thing of value for transportation by that person to or from the business or worksite of an employer.

(b) Any person who violates this section, or who causes or induces another to violate this section, is guilty of a misdemeanor punishable by a fine of not more than five thousand dollars ($5,000) and not less than five hundred dollars ($500), or imprisonment in the county jail for not more than 30 days, or both.

(c) Any individual claiming to be aggrieved by a violation of this section may bring a civil action for injunctive relief, damages, or both. If the court finds that the defendant has violated this section, it shall award actual damages, plus an amount equal to treble the amount of actual damages, or five hundred dollars ($500) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(d) Any other party who, upon information and belief, claims a violation of this section has been committed may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(Added by Stats. 1989, Ch. 476, Sec. 1.)

1697.2. Actions brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(Added by Stats. 1988, Ch. 1000, Sec. 6.)

1697.3. Upon the final determination of the Labor Commissioner that a grower, a farm labor contractor, or person acting in the capacity of a farm labor contractor has failed to pay wages to its employees, the grower, farm labor contractor, or person acting in the capacity of a farm labor contractor shall immediately pay those wages. If payment is not made within 30 days of the final determination, the Labor Commissioner shall forward the matter for consideration of prosecution to the local district attorney's office.

(Added by Stats. 2001, Ch. 157, Sec. 5. Effective January 1, 2002.)

1698. All fines collected for violations of this chapter shall be paid into the Farmworker Remedial Account and shall be available, upon appropriation, for purposes of this chapter. Of the moneys collected for licenses issued pursuant to this

chapter, one hundred fifty dollars ($150) of each annual license fee shall be deposited in the Farmworker Remedial Account pursuant to paragraph (4) of subdivision (a) of Section 1684, three hundred fifty dollars ($350) of each annual license fee shall be expended by the Labor Commissioner to fund the Farm Labor Contractor Enforcement Unit and the Farm Labor Contractor License Verification Unit, both within the department, and the remaining money shall be paid into the Labor Enforcement and Compliance Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 181. Effective June 27, 2016.)

1698.1. No licensee shall sell, transfer or give away any interest in or the right to participate in the profits of said licensee's business without the written consent of the Labor Commissioner. A violation of this section shall constitute a misdemeanor, and shall be punishable by a fine of not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisonment for not more than 60 days, or both.

(Amended by Stats. 2000, Ch. 917, Sec. 7. Effective January 1, 2001.)

1698.2. No licensee shall knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

(Added by Stats. 1967, Ch. 1505.)

1698.3. No licensee shall accept a fee from any applicant for employment, or send any applicant for employment without having obtained orally or in writing, a bona fide order therefor, and in no case shall such licensee accept, directly or indirectly, a registration fee of any kind.

(Added by Stats. 1967, Ch. 1505.)

1698.4. No licensee shall send or cause to be sent, any woman or minor under the age of 18 years, as an employee to any house of ill fame, to any house or place of amusement for immoral purpose, to places resorted to for the purposes of prostitution, or to gambling houses, the character of which places the licensee could have ascertained upon reasonable inquiry.

(Amended by Stats. 1972, Ch. 271.)

1698.5. No licensee shall send any minor to any saloon or place where intoxicating liquors are sold to be consumed on the premises.

(Amended by Stats. 1972, Ch. 579.)

1698.6. No licensee shall knowingly permit any persons of bad character, prostitutes, gamblers, intoxicated persons, or procurers to frequent his premises.

(Added by Stats. 1967, Ch. 1505.)

1698.7. No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of Part 4 (commencing with Section 1171) of this division.

(Added by Stats. 1967, Ch. 1505.)

1698.8. No licensee shall divide fees with an employer, an agent or other employee of an employer or person to whom help is furnished.

(Added by Stats. 1967, Ch. 1505.)

1698.9. A farm labor contractor successor to any predecessor farm labor contractor that owed wages or penalties to a former employee of the predecessor, whether the predecessor was a licensee under this chapter or not, is liable for those wages and penalties, if the successor farm labor contractor meets one or more of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor farm labor contractor. A farm labor contractor that has operated with a valid license for at least the preceding three years shall have an affirmative defense to liability under this subdivision for using substantially the same workforce, if all of the following apply:

(1) The individuals in the workforce were not referred or supplied for employment by the predecessor farm labor contractor to the licensed farm labor contractor asserting this defense.

(2) The licensed farm labor contractor asserting the defense has not had any interest in, or connection with, the operation, ownership, management, or control of the business of the predecessor farm labor contractor within the preceding three years.

(3) The licensed farm labor contractor asserting the defense has not been determined to have violated any provision of the Labor Code within the preceding three years.

(b) Shares in the ownership, management, control of the workforce, or interrelations of business operations with the predecessor farm labor contractor.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the employees owed wages or penalties by the predecessor farm labor contractor.

(d) Is an immediate family member of any owner, partner, officer, licensee, or director of the predecessor farm labor contractor or of any person who had a financial interest in the predecessor farm labor contractor. As used in this section, "immediate family member" means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, or grandparent.

(Added by Stats. 2013, Ch. 715, Sec. 1. Effective January 1, 2014.)

1699. The Labor Commissioner may, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code, adopt, amend, and repeal such rules and regulations as are reasonably necessary for the purpose of enforcing and administering this chapter and as are not inconsistent with this chapter.

(Amended by Stats. 1967, Ch. 125.)

Chapter 4. Talent Agencies

(Heading of Chapter 4 amended by Stats. 1978, Ch. 1382.)

Article 1. Scope and Definitions

(Article 1 added by Stats. 1959, Ch. 888.)

1700. As used in this chapter, "person" means any individual, company, society, firm, partnership, association, corporation, limited liability company, manager, or their agents or employees.

(Amended by Stats. 1994, Ch. 1010, Sec. 184. Effective January 1, 1995.)

1700.1. As used in this chapter:

(a) "Theatrical engagement" means any engagement or employment of a person as an actor, performer, or entertainer in a circus, vaudeville, theatrical, or other entertainment, exhibition, or performance.

(b) "Motion picture engagement" means any engagement or employment of a person as an actor, actress, director, scenario, or continuity writer, camera man, or in any capacity concerned with the making of motion pictures.

(c) "Emergency engagement" means an engagement which has to be performed within 24 hours from the time when the contract for such engagement is made.

(Added by Stats. 1959, Ch. 888.)

1700.2. (a) As used in this chapter, "fee" means any of the following:

(1) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by any person conducting the business of a talent agency under this chapter.

(2) Any money received by any person in excess of that which has been paid out by him or her for transportation, transfer of baggage, or board and lodging for any applicant for employment.

(3) The difference between the amount of money received by any person who furnished employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, or performances, and the amount paid by him or her to the employee, performer, or entertainer.

(b) As used in this chapter, "registration fee" means any charge made, or attempted to be made, to an artist for any of the following purposes:

(1) Registering or listing an applicant for employment in the entertainment industry.

(2) Letter writing.

(3) Photographs, film strips, video tapes, or other reproductions of the applicant.

(4) Costumes for the applicant.

(5) Any activity of a like nature.

(Amended by Stats. 1986, Ch. 488, Sec. 1.)

1700.3. As used in this chapter:

(a) "License" means a license issued by the Labor Commissioner to carry on the business of a talent agency under this chapter.

(b) "Licensee" means a talent agency which holds a valid, unrevoked, and unforfeited license under this chapter.

(Added by Stats. 1978, Ch. 1382.)

1700.4. (a) "Talent agency" means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

(b) "Artists" means actors and actresses rendering services on the legitimate stage and in the production of motion pictures, radio artists, musical artists, musical organizations, directors of legitimate stage, motion picture and radio productions, musical directors, writers, cinematographers, composers, lyricists, arrangers, models, and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises.

(Amended by Stats. 1986, Ch. 488, Sec. 2.)

Article 2. Licenses

(Article 2 added by Stats. 1959, Ch. 888.)

1700.5. No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner. The license shall be posted in a conspicuous place in the office of the licensee. The license number shall be referred to in any advertisement for the purpose of the solicitation of talent for the talent agency.

Licenses issued for talent agencies prior to the effective date of this chapter shall not be invalidated thereby, but renewals of those licenses shall be obtained in the manner prescribed by this chapter.

(Amended by Stats. 1989, Ch. 480, Sec. 1.)

1700.6. A written application for a license shall be made to the Labor Commissioner in the form prescribed by him or her and shall state:

(a) The name and address of the applicant.

(b) The street and number of the building or place where the business of the talent agency is to be conducted.

(c) The business or occupation engaged in by the applicant for at least two years immediately preceding the date of application.

(d) If the applicant is other than a corporation, the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency in question, together with the amount of their respective interests.

If the applicant is a corporation, the corporate name, the names, residential addresses, and telephone numbers of all officers of the corporation, the names of all persons exercising managing responsibility in the applicant or licensee's office, and the names and addresses of all persons having a financial interest of 10 percent or more in the business and the percentage of financial interest owned by those persons.

The application shall be accompanied by two sets of fingerprints of the applicant and affidavits of at least two reputable residents of the city or county in which the business of the talent agency is to be conducted who have known, or been associated with, the applicant for two years, that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

(Amended by Stats. 1986, Ch. 488, Sec. 3.)

1700.7. Upon receipt of an application for a license the Labor Commissioner may cause an investigation to be made as to the character and responsibility of the applicant and of the premises designated in such application as the place in which it is proposed to conduct the business of the talent agency.

(Amended by Stats. 1978, Ch. 1382.)

1700.8. The commissioner upon proper notice and hearing may refuse to grant a license. The proceedings shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the commissioner shall have all the power granted therein.

(Added by Stats. 1959, Ch. 888.)

1700.9. No license shall be granted to conduct the business of a talent agency:

(a) In a place that would endanger the health, safety, or welfare of the artist.

(b) To a person whose license has been revoked within three years from the date of application.

(Amended by Stats. 1986, Ch. 488, Sec. 4.)

1700.10. The license when first issued shall run to the next birthday of the applicant, and each license shall then be renewed within the 30 days preceding the licensee's birthday and shall run from birthday to birthday. In case the applicant is a partnership, such license shall be renewed within the 30 days preceding the birthday of the oldest partner. If the applicant is a corporation, such license shall be renewed within the 30 days preceding the anniversary of the date the corporation was lawfully formed. Renewal shall require the filing of an application for renewal, a renewal bond, and the payment of the annual license fee, but the Labor Commissioner may demand that a new application or new bond be submitted.

If the applicant or licensee desires, in addition, a branch office license, he shall file an application in accordance with the provisions of this section as heretofore set forth.

(Repealed and added by Stats. 1978, Ch. 1382.)

1700.11. All applications for renewal shall state the names and addresses of all persons, except bona fide employees on stated salaries, financially interested either as partners, associates or profit sharers, in the operation of the business of the talent agency.

(Amended by Stats. 1978, Ch. 1382.)

1700.12. A filing fee of twenty-five dollars ($25) shall be paid to the Labor Commissioner at the time the application for issuance of a talent agency license is filed.

In addition to the filing fee required for application for issuance of a talent agency license, every talent agency shall pay to the Labor Commissioner annually at the time a license is issued or renewed:

(a) A license fee of two hundred twenty-five dollars ($225).

(b) Fifty dollars ($50) for each branch office maintained by the talent agency in this state.

(Amended by Stats. 1983, Ch. 323, Sec. 61. Effective July 1, 1983.)

1700.13. A filing fee of twenty-five dollars ($25) shall be paid to the Labor Commissioner at the time application for consent to the transfer or assignment of a talent agency license is made but no license fee shall be required upon the assignment or transfer of a license.

The location of a talent agency shall not be changed without the written consent of the Labor Commissioner.

(Amended by Stats. 1978, Ch. 1382.)

1700.14. Whenever an application for a license or renewal is made, and application processing pursuant to this chapter has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional license valid for a period not exceeding 90 days, and subject, where appropriate, to the automatic and summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal shall meet the requirements of Section 1700.6.

(Added by Stats. 1984, Ch. 557, Sec. 3.)

1700.15. A talent agency shall also deposit with the Labor Commissioner, prior to the issuance or renewal of a license, a surety bond in the penal sum of fifty thousand dollars ($50,000).

(Amended by Stats. 2005, Ch. 46, Sec. 1. Effective January 1, 2006.)

1700.16. Such surety bonds shall be payable to the people of the State of California, and shall be conditioned that the person applying for the license will comply with this chapter and will pay all sums due any individual or group of individuals when such person or his representative or agent has received such sums, and will pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud, deceit, or any unlawful acts or omissions of the licensed talent agency, or its agents or employees, while acting within the scope of their employment.

(Amended by Stats. 1978, Ch. 1382.)

1700.18. (a) All moneys collected for filing fees and licenses under this chapter shall be paid into the State Treasury and credited to the Labor Enforcement and Compliance Fund.

(b) All fines collected for violations of this chapter shall be paid into the State Treasury and credited to the General Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 182. Effective June 27, 2016.)

1700.19. Each license shall contain all of the following:

(a) The name of the licensee.

(b) A designation of the city, street, and number of the premises in which the licensee is authorized to carry on the business of a talent agency.

(c) The number and date of issuance of the license.

(Amended by Stats. 1986, Ch. 488, Sec. 6.)

1700.20. No license shall protect any other than the person to whom it is issued nor any places other than those designated in the license. No license shall be transferred or assigned to any person unless written consent is obtained from the Labor Commissioner.

(Added by Stats. 1959, Ch. 888.)

1700.20a. The Labor Commissioner may issue to a person eligible therefor a certificate of convenience to conduct the business of a talent agency where the person licensed to conduct such talent agency business has died or has had a conservator of the estate appointed by a court of competent jurisdiction. Such a certificate of convenience may be denominated an estate certificate of convenience.

(Amended by Stats. 1979, Ch. 730.)

1700.20b. To be eligible for a certificate of convenience, a person shall be either:

(a) The executor or administrator of the estate of a deceased person licensed to conduct the business of a talent agency.

(b) If no executor or administrator has been appointed, the surviving spouse or heir otherwise entitled to conduct the business of such deceased licensee.

(c) The conservator of the estate of a person licensed to conduct the business of a talent agency.

Such estate certificate of convenience shall continue in force for a period of not to exceed 90 days, and shall be renewable for such period as the Labor Commissioner may deem appropriate, pending the disposal of the talent agency license or the procurement of a new license under the provisions of this chapter.

(Amended by Stats. 1979, Ch. 730.)

1700.21. The Labor Commissioner may revoke or suspend any license when it is shown that any of the following occur:

(a) The licensee or his or her agent has violated or failed to comply with any of the provisions of this chapter.

(b) The licensee has ceased to be of good moral character.

(c) The conditions under which the license was issued have changed or no longer exist.

(d) The licensee has made any material misrepresentation or false statement in his or her application for a license.

(Amended by Stats. 1986, Ch. 488, Sec. 7.)

1700.22. Before revoking or suspending any license, the Labor Commissioner shall afford the holder of such license an opportunity to be heard in person or by counsel. The proceedings shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(Added by Stats. 1959, Ch. 888.)

Article 3. Operation and Management

(Article 3 added by Stats. 1959, Ch. 888.)

1700.23. Every talent agency shall submit to the Labor Commissioner a form or forms of contract to be utilized by such talent agency in entering into written contracts with artists for the employment of the services of such talent agency by such artists, and secure the approval of the Labor Commissioner thereof. Such approval shall not be withheld as to any proposed form of contract unless such proposed form of contract is unfair, unjust and oppressive to the artist. Each such form of contract, except under the conditions specified in Section 1700.45, shall contain an agreement by the talent agency to refer any controversy

between the artist and the talent agency relating to the terms of the contract to the Labor Commissioner for adjustment. There shall be printed on the face of the contract in prominent type the following: "This talent agency is licensed by the Labor Commissioner of the State of California."

(Amended by Stats. 1978, Ch. 1382.)

1700.24. Every talent agency shall file with the Labor Commissioner a schedule of fees to be charged and collected in the conduct of that occupation, and shall also keep a copy of the schedule posted in a conspicuous place in the office of the talent agency. Changes in the schedule may be made from time to time, but no fee or change of fee shall become effective until seven days after the date of filing thereof with the Labor Commissioner and until posted for not less than seven days in a conspicuous place in the office of the talent agency.

(Amended by Stats. 1986, Ch. 488, Sec. 8.)

1700.25. (a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit that amount in a trust fund account maintained by him or her in a bank or other recognized depository. The funds, less the licensee's commission, shall be disbursed to the artist within 30 days after receipt. However, notwithstanding the preceding sentence, the licensee may retain the funds beyond 30 days of receipt in either of the following circumstances:

(1) To the extent necessary to offset an obligation of the artist to the talent agency that is then due and owing.

(2) When the funds are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 concerning a fee alleged to be owed by the artist to the licensee.

(b) A separate record shall be maintained of all funds received on behalf of an artist and the record shall further indicate the disposition of the funds.

(c) If disputed by the artist and the dispute is referred to the Labor Commissioner, the failure of a licensee to disburse funds to an artist within 30 days of receipt shall constitute a "controversy" within the meaning of Section 1700.44.

(d) Any funds specified in subdivision (a) that are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 shall be retained in the trust fund account specified in subdivision (a) and shall not be used by the licensee for any purpose until the controversy is determined by the Labor Commissioner or settled by the parties.

(e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse funds to an artist within the time required by subdivision (a) was a willful violation, the Labor Commissioner may, in addition to other relief under Section 1700.44, order the following:

(1) Award reasonable attorney's fees to the prevailing artist.

(2) Award interest to the prevailing artist on the funds wrongfully withheld at the rate of 10 percent per annum during the period of the violation.

(f) Nothing in subdivision (c), (d), or (e) shall be deemed to supersede Section 1700.45 or to affect the enforceability of a contractual arbitration provision meeting the criteria of Section 1700.45.

(Amended by Stats. 1994, Ch. 1032, Sec. 1. Effective January 1, 1995.)

1700.26. Every talent agency shall keep records in a form approved by the Labor Commissioner, in which shall be entered all of the following:

(1) The name and address of each artist employing the talent agency.

(2) The amount of fee received from the artist.

(3) The employments secured by the artist during the term of the contract between the artist and the talent agency, and the amount of compensation received by the artists pursuant thereto.

(4) Any other information which the Labor Commissioner requires.

No talent agency, its agent or employees, shall make any false entry in any records.

(Amended by Stats. 1986, Ch. 488, Sec. 11.)

1700.27. All books, records, and other papers kept pursuant to this chapter by any talent agency shall be open at all reasonable hours to the inspection of the Labor Commissioner and his agents. Every talent agency shall furnish to the Labor Commissioner upon request a true copy of such books, records, and papers or any portion thereof, and shall make such reports as the Labor Commissioner prescribes.

(Amended by Stats. 1978, Ch. 1382.)

1700.28. Every talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this chapter and of such other statutes as may be specified by the Labor Commissioner. Such copies shall also contain the name and address of the officer charged with the enforcement of this chapter. The Labor Commissioner shall furnish to talent agencies printed copies of any statute required to be posted under the provisions of this section.

(Amended by Stats. 1978, Ch. 1382.)

1700.29. The Labor Commissioner may, in accordance with the provisions of Chapter 4 (commencing at Section 11370), Part 1, Division 3, Title 2 of the Government Code, adopt, amend, and repeal such rules and regulations as are reasonably necessary for the purpose of enforcing and administering this chapter and as are not inconsistent with this chapter.

(Added by Stats. 1959, Ch. 888.)

1700.30. No talent agency shall sell, transfer, or give away to any person other than a director, officer, manager, employee, or shareholder of the talent agency any interest in or the right to participate in the profits of the talent agency without the written consent of the Labor Commissioner.

(Amended by Stats. 1986, Ch. 488, Sec. 12.)

1700.31. No talent agency shall knowingly issue a contract for employment containing any term or condition which, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law.

(Amended by Stats. 1978, Ch. 1382.)

1700.32. No talent agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the licensed name and address of the talent agency and the words "talent agency." No talent agency shall give any false information or make any false promises or representations concerning an engagement or employment to any applicant who applies for an engagement or employment.

(Amended by Stats. 1978, Ch. 1382.)

1700.33. No talent agency shall send or cause to be sent, any artist to any place where the health, safety, or welfare of the artist could be adversely affected, the character of which place the talent agency could have ascertained upon reasonable inquiry.

(Amended by Stats. 1986, Ch. 488, Sec. 13.)

1700.34. No talent agency shall send any minor to any saloon or place where intoxicating liquors are sold to be consumed on the premises.

(Amended by Stats. 1978, Ch. 1382.)

1700.35. No talent agency shall knowingly permit any persons of bad character, prostitutes, gamblers, intoxicated persons, or procurers to frequent, or be employed in, the place of business of the talent agency.

(Amended by Stats. 1978, Ch. 1382.)

1700.36. No talent agency shall accept any application for employment made by or on behalf of any minor, as defined by subdivision (c) of Section 1286, or shall place or assist in placing any such minor in any employment whatever in violation of Part 4 (commencing with Section 1171).

(Amended by Stats. 1983, Ch. 142, Sec. 100.)

1700.37. A minor cannot disaffirm a contract, otherwise valid, entered into during minority, either during the actual minority of the minor entering into such contract or at any time thereafter, with a duly licensed talent agency as defined in Section 1700.4 to secure him engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor or designer, the blank form of which has been approved by the Labor Commissioner pursuant to Section 1700.23, where such contract has been approved by the superior court of the county where such minor resides or is employed.

Such approval may be given by the superior court on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard.

(Amended by Stats. 1978, Ch. 1382.)

1700.38. No talent agency shall knowingly secure employment for an artist in any place where a strike, lockout, or other labor trouble exists, without notifying the artist of such conditions.

(Amended by Stats. 1978, Ch. 1382.)

1700.39. No talent agency shall divide fees with an employer, an agent or other employee of an employer.

(Amended by Stats. 1978, Ch. 1382.)

1700.40. (a) No talent agency shall collect a registration fee. In the event that a talent agency shall collect from an artist a fee or expenses for obtaining employment for the artist, and the artist shall fail to procure the employment, or the artist shall fail to be paid for the employment, the talent agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless repayment thereof is made within 48 hours after demand therefor, the talent agency shall pay to the artist an additional sum equal to the amount of the fee.

(b) No talent agency may refer an artist to any person, firm, or corporation in which the talent agency has a direct or indirect financial interest for other services to be rendered to the artist, including, but not limited to, photography, audition tapes, demonstration reels or similar materials, business management, personal management, coaching, dramatic school, casting or talent brochures, agency-client directories, or other printing.

(c) No talent agency may accept any referral fee or similar compensation from any person, association, or corporation providing services of any type expressly set forth in subdivision (b) to an artist under contract with the talent agency.

(Amended by Stats. 1994, Ch. 1032, Sec. 2. Effective January 1, 1995.)

1700.41. In cases where an artist is sent by a talent agency beyond the limits of the city in which the office of such talent agency is located upon the representation of such talent agency that employment of a particular type will there be available for the artist and the artist does not find such employment available, such talent agency shall reimburse the artist for any actual expenses incurred in going to and returning from the place where the artist has been so sent unless the artist has been otherwise so reimbursed.

(Amended by Stats. 1978, Ch. 1382.)

1700.44. (a) In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard de novo. To stay any award for money, the party aggrieved shall execute a bond approved by the superior court in a sum not exceeding twice the amount of the judgment. In all other cases the bond shall be in a sum of not less than one thousand dollars ($1,000) and approved by the superior court.

The Labor Commissioner may certify without a hearing that there is no controversy within the meaning of this section if he or she has by investigation established that there is no dispute as to the amount of the fee due. Service of the certification shall be made upon all parties concerned by registered or certified mail with return receipt requested and the certification shall become conclusive 10 days after the date of mailing if no objection has been filed with the Labor Commissioner during that period.

(b) Notwithstanding any other provision of law to the contrary, failure of any person to obtain a license from the Labor Commissioner pursuant to this chapter shall not be considered a criminal act under any law of this state.

(c) No action or proceeding shall be brought pursuant to this chapter with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding.

(d) It is not unlawful for a person or corporation which is not licensed pursuant to this chapter to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract.

(Amended by Stats. 1986, Ch. 488, Sec. 15.)

1700.45. Notwithstanding Section 1700.44, a provision in a contract providing for the decision by arbitration of any controversy under the contract or as to its existence, validity, construction, performance, nonperformance, breach, operation, continuance, or termination, shall be valid:

(a) If the provision is contained in a contract between a talent agency and a person for whom the talent agency under the contract undertakes to endeavor to secure employment, or

(b) If the provision is inserted in the contract pursuant to any rule, regulation, or contract of a bona fide labor union regulating the relations of its members to a talent agency, and

(c) If the contract provides for reasonable notice to the Labor Commissioner of the time and place of all arbitration hearings, and

(d) If the contract provides that the Labor Commissioner or his or her authorized representative has the right to attend all arbitration hearings.

Except as otherwise provided in this section, any arbitration shall be governed by the provisions of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

If there is an arbitration provision in a contract, the contract need not provide that the talent agency agrees to refer any controversy between the applicant and the talent agency regarding the terms of the contract to the Labor Commissioner for adjustment, and Section 1700.44 shall not apply to controversies pertaining to the contract.

A provision in a contract providing for the decision by arbitration of any controversy arising under this chapter which does not meet the requirements of this section is not made valid by Section 1281 of the Code of Civil Procedure.

(Amended by Stats. 1986, Ch. 488, Sec. 16.)

1700.47. It shall be unlawful for any licensee to refuse to represent any artist on account of that artist's race, color, creed, sex, national origin, religion, or handicap.

(Repealed and added by Stats. 1986, Ch. 488, Sec. 18.)

Chapter 4.5. Fee-Related Talent Services

(Repealed and added by Stats. 2009, Ch. 286, Sec. 3.)

Article 1. Definitions

(Article 1 added by Stats. 2009, Ch. 286, Sec. 3.)

1701. For purposes of this chapter, the following terms have the following meanings:

(a) "Artist" means a person who is or seeks to become an actor, actress, model, extra, radio artist, musical artist, musical organization, director, musical director, writer, cinematographer, composer, lyricist, arranger, or other person rendering professional services in motion picture, theatrical, radio, television, Internet, print media, or other entertainment enterprises or technologies.

(b) "Audition" means any activity for the purpose of obtaining employment, compensated or not, as an artist whereby an artist meets with, interviews or performs before, or displays his or her talent before, any person, including a producer, a director, or a casting director, or an associate, representative, or designee of a producer, director, or casting director, who has, or is represented to have, input into the decision to select an artist for an employment opportunity. An "audition" may be in-person or through electronic means, live or recorded, and may include a performance or other display of the artist's promotional materials.

(c) "Employment opportunity" means the opportunity to obtain work as an artist, whether compensated or not.

(d) "Fee" means any money or other valuable consideration paid or promised to be paid by or on behalf of an artist for services rendered or to be rendered by any person conducting business under this chapter. "Fee" does not include the following:

(1) A fee calculated as a percentage of the income earned by the artist for his or her employment as an artist.

(2) (A) Reimbursements for out-of-pocket costs actually incurred by the payee on behalf of the artist for services rendered or goods provided to the artist by an independent third party if all of the following conditions are met:

(i) The payee has no direct or indirect financial interest in the third party.

(ii) The payee does not accept any referral fee, kickback, or other consideration for referring the artist.

(iii) The services rendered or goods provided for the out-of-pocket costs are not, and are not represented to be, a condition for the payee to register or list the artist with the payee.

(iv) The payee maintains adequate records to establish that the amount to be reimbursed was actually advanced or owed to a third party and that the third party is not a person with whom the payee has a direct or indirect financial interest or from whom the payee receives any consideration for referring the artist. To satisfy this condition, the payee shall maintain the records for at least three years and make them available for inspection and copying within 24 hours of a written request by the Labor Commissioner, the Attorney General, a district attorney, a city attorney, or a state or local enforcement agency.

(B) A person asserting a defense based upon this paragraph has the burden of producing evidence to support the defense.

(3) Appearances, marketing, or similar activities by an artist rendered in the context of promoting that artist's career.

(4) Royalties or profit participation from work or services as an artist payable under a bona fide contractual obligation.

(e) "Person" means an individual, company, society, firm, partnership, association, corporation, limited liability company, trust, or other organization.

(f) "Talent counseling service" means a person who does not manage or direct the development of an artist's career and who, for a fee from, or on behalf of, an artist, provides or offers to provide, or advertises or represents itself as providing, that artist, directly or by referral to another person, with career counseling, vocational guidance, aptitude testing, or career evaluation as an artist.

(g) "Talent listing service" means a person who, for a fee from, or on behalf of, an artist, provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, with any of the following:

(1) A list of one or more auditions or employment opportunities.

(2) A list of talent agents or talent managers, including an associate, representative, or designee thereof.

(3) A search, or providing the artist with the ability to perform a self-directed search, of any database for an audition or employment opportunity, or a database of talent agents or talent managers, or an associate, representative, or designee thereof.

(4) Storage or maintenance for distribution or disclosure to a person represented as offering an audition or employment opportunity, or to a talent agent, talent manager, or an associate, representative, or designee of a talent agent or talent manager, of either of the following: (A) an artist's name, photograph, Internet Web site, filmstrip, videotape, audition tape, demonstration reel, résumé, portfolio, or other reproduction or promotional material of the artist or (B) an artist's schedule of availability for an audition or employment opportunity.

(h) "Talent scout" means an individual employed, appointed, or authorized by a talent service, who solicits or attempts to solicit an artist for the purpose of becoming a client of the service. The principals of a service are themselves talent scouts if they solicit on behalf of the service.

(i) "Talent service" means a talent counseling service, a talent listing service, or a talent training service.

(j) "Talent training service" means a person who, for a fee from, or on behalf of, an artist, provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, with lessons, coaching, seminars, workshops, or similar training as an artist.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

Article 2. Advance-Fee Talent Representation Service

(Article 2 added by Stats. 2009, Ch. 286, Sec. 3.)

1702. No person shall own, operate, or act in the capacity of an advance-fee talent representation service or advertise, solicit for, or knowingly refer a person to, an advance-fee talent representation service.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1702.1. (a) "Advance-fee talent representation service" means a person who provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, with one or more of the following services described below, provided that the person charges or receives a fee from or on behalf of an artist for photographs, Internet Web sites, or other reproductions or other promotional materials as an artist; lessons, coaching, seminars, workshops, or similar training for an artist; or for one or more of the following services:

(1) Procuring or attempting to procure an employment opportunity or an engagement as an artist.

(2) Procuring or attempting to procure an audition for an artist.

(3) Managing or directing the development of an artist's career.

(4) Procuring or attempting to procure a talent agent or talent manager, including an associate, representative, or designee of a talent agent or talent manager.

(b) "Advance-fee talent representation service" also means a person who charges or receives a fee from, or on behalf of, an artist for any product or service required for the artist to obtain, from or through the person, any of the services described in paragraphs (1) to (4), inclusive, of subdivision (a).

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1702.3. A person who violates Section 1702 is subject to the provisions of Article 4 (commencing with Section 1704).

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1702.4. This article does not apply to the following:

(a) A public educational institution.

(b) A nonprofit corporation, organized to achieve economic adjustment and civic betterment, give vocational guidance, including employment counseling services, and assist in the placement of its members or others, if all of the following conditions exist:

(1) None of the corporation's directors, officers, or employees receive any compensation other than a nominal salary for services performed for the corporation.

(2) The corporation does not charge a fee for its services, although it may request a voluntary contribution.

(3) The corporation uses any membership dues or fees solely for maintenance.

(c) A nonprofit corporation, formed in good faith for the promotion and advancement of the general professional interests of its members, that maintains a placement service principally engaged to secure employment for its members with the state or a county, city, district, or other public agency under contracts providing employment for one year or longer, or with a nonprofit corporation exempted by subdivision (b).

(d) A labor organization, as defined in Section 1117.

(e) A newspaper, bona fide newsletter, magazine, trade or professional journal, or other publication of general circulation, whether in print or on the Internet, that has as its main purpose the dissemination of news, reports, trade or professional information, or information not intended to assist in locating, securing, or procuring employment or assignments for others.

(f) A public institution.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

Article 3. Other Talent Services

(Article 3 added by Stats. 2009, Ch. 286, Sec. 3.)

1703. (a) Every contract and agreement between an artist and a talent service shall be in writing, in at least 10-point type, and contain all of the following provisions:

(1) The name, address, telephone number, fax number (if any), email address (if any), and Internet Web site address (if any), of the talent service, the artist to whom services are to be provided, and the representative executing the contract on behalf of the talent service.

(2) A description of the services to be performed, a statement when those services are to be provided, and the duration of the contract.

(3) Evidence of compliance with applicable bonding requirements, including the name of the bonding company and the bond number, if any, and a statement that a bond in the amount of fifty thousand dollars ($50,000) must be posted with the Labor Commissioner.

(4) The amount of any fees to be charged to or collected from, or on behalf of, the artist receiving the services, and the date or dates when those fees are required to be paid.

(5) The following statements, in boldface type and in close proximity to the artist's signature:

"(Name of talent service) IS A TALENT COUNSELING SERVICE, TALENT LISTING SERVICE, OR TALENT TRAINING SERVICE (whichever is applicable). THIS IS NOT A TALENT AGENCY CONTRACT. ONLY A TALENT AGENT LICENSED PURSUANT TO SECTION 1700.5 OF THE LABOR CODE MAY ENGAGE IN THE OCCUPATION OF PROCURING, OFFERING, PROMISING, OR ATTEMPTING TO PROCURE EMPLOYMENT OR ENGAGEMENTS FOR AN ARTIST. (Name of talent service) IS PROHIBITED BY LAW FROM OFFERING OR ATTEMPTING TO OBTAIN AUDITIONS OR EMPLOYMENT FOR YOU. IT MAY ONLY PROVIDE YOU WITH TRAINING, COUNSELING, OR LISTING INFORMATION (whichever is applicable). FOR MORE INFORMATION, CONSULT CHAPTER 4.5 (COMMENCING WITH SECTION 1701) OF PART 6 OF DIVISION 2 OF THE LABOR CODE. A DISPUTE ARISING OUT OF THE PERFORMANCE OF THE CONTRACT BY THE TALENT SERVICE THAT IS NOT RESOLVED TO THE SATISFACTION OF THE ARTIST SHOULD BE REFERRED TO A LOCAL CONSUMER AFFAIRS DEPARTMENT OR LOCAL LAW ENFORCEMENT, AS APPROPRIATE.
YOUR RIGHT TO CANCEL
(enter date of transaction)
You may cancel this contract and obtain a full refund, without any penalty or obligation, if notice of cancellation is given, in writing, within 10 business days from the above date or the date on which you commence utilizing the services under the contract, whichever is longer. For purposes of this section, business days are Monday through Friday.

To cancel this contract, mail or deliver or send by facsimile transmission a signed and dated copy of the following cancellation notice or any other written notice of cancellation to (name of talent service) at (address of its place of business), fax number (if any), email address (if any), and Internet Web site address (if any), NOT LATER THAN MIDNIGHT OF (date). If the contract was executed in part or in whole through the Internet, you may cancel the contract by sending the notification to: (email address).
CANCELLATION NOTICE
I hereby cancel this contract.
Dated:
Artist Signature. If you cancel, all fees you have paid must be refunded to you within 10 business days after delivery of the cancellation notice to the talent service."

(6) A statement conspicuously disclosing whether the artist may or may not obtain a refund after the 10-day cancellation period described in paragraph (5) has expired.

(b) Except for contracts executed over the Internet, a contract subject to this section shall be dated and signed by the artist and the representative executing the contract on behalf of the talent service. In the case of a contract executed over the Internet, the talent service shall give the artist clear and conspicuous notice of the contract terms and provide to the artist the ability to acknowledge receipt of the terms before acknowledging agreement thereto. In any dispute regarding compliance with this subdivision, the talent service shall have the burden of proving that the artist received the terms and acknowledged agreement thereto.

(c) If the talent service offers to list or display information about an artist, including a photograph, on the service's Internet Web site, online service, online application, or mobile application or on a Web site, online service, online application, or mobile application that the talent service has authority to design or alter, the contract shall contain a notice that the talent service will remove the listing and content within 10 days of a request by the artist or, in the case of a minor, the artist's parent or guardian. The contract shall include a valid telephone number, mailing address, and email address for the talent service to which a request for removal may be made.

(d) A contract between an artist and a talent service shall be contained in a single document that includes the elements set forth in this section. A contract subject to this section that does not comply with subdivisions (a) to (f), inclusive, is voidable at the election of the artist and may be canceled by the artist at any time without any penalty or obligation.

(e) (1) An artist may cancel a contract or within 10 business days from the date he or she commences utilizing the services under the contract. An artist shall notify the talent service of the cancellation for talent services within 10 business days of the date he or she executed the contract by mailing, delivering, or sending by facsimile transmission to the talent service, a signed and dated copy of the cancellation notice or any other written notice of cancellation, or by sending a notice of cancellation via the Internet if the contract was executed in part or in whole through the Internet. A talent service shall refund all fees paid by, or on behalf of, an artist within 10 business days after delivery of the cancellation notice.

(2) Unless a talent service conspicuously discloses in the contract that cancellation is prohibited after the 10-day cancellation period described in paragraph (1), an artist may cancel a contract for talent services at any time after the 10-day cancellation period by mailing, delivering, or sending by facsimile transmission to the talent service a signed and dated copy of the cancellation notice or any other written notice of cancellation, or by sending a notice of cancellation via the Internet if the contract was executed in part or in whole through the Internet. Within 10 business days after delivery of the cancellation notice, the talent service shall refund to the artist on a pro rata basis all fees paid by, or on behalf of, the artist.

(f) A contract between an artist and a talent service shall have a term of not more than one year and shall not be renewed automatically.

(g) The talent service shall maintain the address set forth in the contract for receipt of cancellation and for removal of an Internet Web site or other listing, unless it furnishes the artist with written notice of a change of address. Written notice of a change of address may be done by email if the artist designates an email address in the contract for purposes of receiving written notice.

(h) The talent service shall advise a person inquiring about canceling a contract to follow the written procedures for cancellation set forth in the contract.

(i) Before the artist signs a contract and before the artist or any person acting on his or her behalf becomes obligated to pay or pays any fee, the talent service shall provide a copy of the contract to the artist for the artist to keep. If the contract was executed through the Internet, the talent service may provide a copy of the contract to the artist by making it available to be downloaded and printed through the Internet.

(j) The talent service shall maintain the original executed contract on file at its place of business.

(Amended by Stats. 2016, Ch. 245, Sec. 1. Effective January 1, 2017.)

1703.1. (a) Every person engaging in the business of a talent service shall keep and maintain records of the talent service business, including the following:

(1) The name and address of each artist contracting with the talent service.

(2) The amount of the fees paid by or for the artist during the term of the contract with the talent service.

(3) Records described in clause (iv) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 1701.

(4) Records described in paragraph (1) of subdivision (b) of Section 1703.6.

(5) Records described in subdivision (j) of Section 1703.

(6) Records described in paragraph (1) of subdivision (a) of Section 1703.4.

(7) Records described in paragraph (2) of subdivision (a) of Section 1703.4.

(8) Records described in paragraph (2) of subdivision (c) of Section 1703.4.

(9) The name, address, date of birth, social security number, federal tax identification number, and driver's license number and state of issuance thereof, of the owner of the talent service and of the corporate officers of the talent service, if it is owned by a corporation.

(10) The legal name, principal residence address, date of birth, and driver's license number and state of issuance thereof, of every talent scout and the name each talent scout uses while soliciting artists.

(11) Any other information that the Labor Commissioner requires.

(b) All books, records, and other papers kept pursuant to this chapter by a talent service shall be open for inspection during the hours between 9 a.m. and 5 p.m., inclusive, Monday to Friday, inclusive, except legal holidays, by a peace officer or a representative from the Labor Commissioner, the Attorney General, any district attorney, or any city attorney. Every talent service shall furnish to the Labor Commissioner, a law enforcement officer, the Attorney General, any district attorney, or any city attorney, upon request, a true copy of those books, records, and papers, or any portion thereof, and shall make reports as the Labor Commissioner requires. The inspecting party shall maintain the confidentiality of any personal identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by state or federal law.

A written or verbal solicitation or advertisement for an artist to perform or demonstrate any talent for the talent service, or to appear for an interview with the talent service, shall include the following clear and conspicuous statement: "This is not an audition for employment or for obtaining a talent agent or talent management."

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1703.3. (a) Prior to advertising or engaging in business, a talent service shall file with the Labor Commissioner a bond in the amount of fifty thousand dollars ($50,000) or a deposit in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure. The bond shall be executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to fifty thousand dollars ($50,000). The bond may be terminated pursuant to Section 995.440 of, or Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person injured by any unlawful act, omission, or failure to provide the services of the talent service.

(c) The Labor Commissioner shall charge and collect a filing fee to cover the cost of filing the bond or deposit.

(d) (1) Whenever a deposit is made in lieu of the bond otherwise required by this section, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Labor Commissioner of injury resulting from an unlawful act, omission, or failure to provide the services of the talent service or of a money judgment entered by a court.

(2) When a claimant has established the claim with the Labor Commissioner, the Labor Commissioner shall review and approve the claim and enter the date of the approval thereon. The claim shall be designated an approved claim.

(3) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Labor Commissioner. Subsequent claims that are approved by the Labor Commissioner within the same 240-day period shall similarly not be paid until the expiration of that 240-day period. Upon the expiration of the 240-day period, the Labor Commissioner shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case every approved claim shall be paid a pro rata share of the deposit.

(4) Whenever the Labor Commissioner approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which paragraph (3) applies with respect to any amount remaining in the deposit.

(5) After a deposit is exhausted, no further claims shall be paid by the Labor Commissioner. Claimants who have had claims paid in full or in part pursuant to paragraph (3) or (4) shall not be required to return funds received from the deposit for the benefit of other claimants.

(6) Whenever a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purposes of this chapter and that would otherwise be returned to the assignor of the deposit by the Labor Commissioner.

(7) The Labor Commissioner shall return a deposit two years from the date it receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of a talent service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following:

(A) The name, address, and telephone number of the assignor.

(B) The name, address, and telephone number of the bank at which the deposit is located.

(C) The account number of the deposit.

(D) A statement that the assignor is ceasing to engage in the business or act in the capacity of a talent service or has filed a bond with the Labor Commissioner. The Labor Commissioner shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and the anticipated date of release of the deposit, provided that there are then no outstanding claims against the deposit.

(8) A superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the court that there are no outstanding claims against the deposit, or order the Labor Commissioner to retain the deposit for a specified period beyond the two years to resolve outstanding claims against the deposit.

(9) This subdivision applies to all deposits retained by the Labor Commissioner. The Labor Commissioner shall notify each assignor of a deposit it retains and of the applicability of this section.

(10) Compliance with Sections 1700.15 and 1700.16 of this code or Section 1812.503, 1812.510, or 1812.515 of the Civil Code shall not satisfy the requirements of this section.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1703.4. (a) A talent service, its owners, directors, officers, agents, and employees shall not do any of the following through any means of communication, including, but not limited to, in person, through the use of a telecommunication device, in print, on the Internet, or through the use of a mobile or online application or other electronic communication:

(1) Make or cause to be made any advertisement or representation expressly or impliedly offering the opportunity

for an artist to meet with or audition before any producer, director, casting director, or any associate thereof, or any other person who makes, or is represented to make, decisions for the process of hiring artists for employment as an artist, or any talent agent or talent manager, or any associate, representative, or designee thereof, unless the talent service maintains for inspection and copying written evidence of the supporting facts, including the name, business address, and job title of all persons conducting the meeting or audition, and the title of the production and the name of the production company.

(2) Make or cause to be made any advertisement or representation that any artist, whether identified or not, has obtained an audition, employment opportunity, or employment as an artist in whole or in part by use of the talent service unless the talent service maintains for inspection written evidence of the supporting facts upon which the claim is based, including the name of the artist and the approximate dates the talent service was used by the artist.

(3) Charge or attempt to charge an artist for an audition or employment opportunity.

(4) Require an artist, as a condition for using the talent service or for obtaining an additional benefit or preferential treatment from the talent service, to pay a fee for creating or providing photographs, filmstrips, videotapes, audition tapes, demonstration reels, or other reproductions of the artist, Internet Web sites, casting or talent brochures, or other promotional materials for the artist.

(5) Charge or attempt to charge an artist any fee not disclosed pursuant to paragraph (4) of subdivision (a) of Section 1703.

(6) Refer an artist to a person who charges the artist a fee for any service or any product in which the talent service, its owners, directors, officers, agents, or employees have a direct or indirect financial interest, unless the fee and the financial interest are conspicuously disclosed in a separate writing provided to the artist to keep prior to his or her execution of the contract with the talent service.

(7) Require an artist, as a condition for using a talent service or for obtaining any additional benefit or preferential treatment from the talent service, to pay a fee to any other talent service in which the talent service, its owners, directors, officers, agents, or employees have a direct or indirect financial interest.

(8) Accept any compensation or other consideration for referring an artist to any person charging the artist a fee.

(9) Fail to remove information about, or photographs of, the artist displayed on the talent service's Internet Web site, online service, online application, or mobile application or an Internet Web site, online service, online application, or mobile application that the service has the authority to design or alter within 10 days of delivery of a request made by telephone, text message, mail, facsimile transmission, email, or other electronic communication from the artist or from a parent or guardian of the artist if the artist is a minor.

(b) A talent training service and talent counseling service and the owners, officers, directors, agents, and employees of the talent training service or talent counseling service shall not own, operate, or have a direct or indirect financial interest in a talent listing service.

(c) A talent listing service and its owners, officers, directors, agents, and employees shall not do any of the following:

(1) Own, operate, or have a direct or indirect financial interest in a talent training service or a talent counseling service.

(2) Provide a listing of an audition, job, or employment opportunity without written permission for the listing. A talent listing service shall keep and maintain a copy of all original listings; the name, business address, and business telephone number of the person granting permission to the talent listing service to use the listing; and the date the permission was granted.

(3) Make or cause to be made an advertisement or representation that includes the trademark, logo, name, word, or phrase of a company or organization, including a studio, production company, network, broadcaster, talent agency licensed pursuant to Section 1700.5, labor union, or labor organization as defined in Section 1117, in any manner that falsely or misleadingly suggests the endorsement, sponsorship, approval, or affiliation of a talent service.

(Amended by Stats. 2016, Ch. 245, Sec. 2. Effective January 1, 2017.)

1703.5. No talent scout shall use the same name as used by any other talent scout soliciting for the same talent service, and no talent service shall permit a talent scout to use the same name as used by any other talent scout soliciting for the talent service.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1703.6. This article does not apply to any of the following:

(a) An entity described in subdivisions (a), (b), (d), (e), and (f) of Section 1702.4.

(b) (1) A private educational institution established solely for educational purposes which, as a part of its curriculum, offers employment counseling to its student body and satisfies either of the following:

(A) The institution conforms to the requirements of Article 5 (commencing with Section 33190) of Chapter 2 of Part 20 of Division 2 of Title 2 of the Education Code.

(B) More than 90 percent of the students to whom instruction, training, or education is provided during any semester or other term of instruction have completed or terminated their secondary education or are beyond the age of compulsory high school attendance. A person claiming exemption under this subparagraph shall maintain adequate records to establish the age of its students, including the name, date of birth, principal residence address, principal telephone number, driver's license number and state of issuance thereof, and dates of attendance, and shall make them available for inspection and copying within 24 hours of a written request by the Labor Commissioner, the Attorney General, a district attorney, a city attorney, or a state or local law enforcement agency. The inspecting party shall maintain the confidentiality of any personal identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by state or federal law.

(2) A person claiming an exemption under this subdivision has the burden of producing evidence to establish the exemption.

(c) A psychologist or psychological corporation, licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, that provides psychological assessment, career or occupational counseling, or consultation and related professional services within the scope of its practice.

(d) An educational psychologist, licensed pursuant to Article 1 (commencing with Section 4980) of Chapter 13 of Division 2 of the Business and Professions Code, who provides counseling services within the scope of his or her practice.

(e) A talent listing service, if all of the following apply:

(1) A majority interest in the service is owned by one or more colleges or universities, or alumni associations affiliated therewith, and each of the colleges or universities is accredited by an accrediting agency recognized by the United States Department of Education and a member organization of the Council of Postsecondary Accreditation.

(2) The service provides services exclusively for artists who are the alumni of colleges or universities specified in paragraph (1).

(3) The service does not require, as a condition to receiving services, an applicant to have completed courses or examinations beyond the requirements for graduation from the applicant's college or university specified in paragraph (1).

(4) More than 50 percent of the annual revenues received by the service are derived from paid subscriptions of prospective employers.

(f) A public library.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

Article 4. Remedies

(Article 4 added by Stats. 2009, Ch. 286, Sec. 3.)

1704. A person, including, an owner, officer, director, agent, or employee of a talent service, who willfully violates any provision of this chapter is guilty of a misdemeanor. Each violation is punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment. However, payment of restitution to an artist shall take precedence over the payment of a fine.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1704.1. The Attorney General, a district attorney, or a city attorney may institute an action for a violation of this chapter, including an action to restrain and enjoin a violation.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1704.2. A person who is injured by a violation of this chapter or by the breach of a contract subject to this chapter may bring an action for recovery of damages or to restrain and enjoin a violation, or both. The court shall award to a plaintiff who prevails in an action under this chapter reasonable attorney's fees and costs. The amount awarded for damages for a violation of this chapter shall be not less than three times the amount paid by the artist, or on behalf of the artist, to the talent service or the advance-fee talent representation service.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1704.3. The Labor Commissioner shall use the proceeds of a bond or deposit posted by a person pursuant to this chapter to satisfy a judgment or restitution order resulting from the person's violation of a provision of this chapter, if the person fails to pay all amounts required by the judgment or restitution order.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

Article 5. General Provisions

(Article 5 added by Stats. 2009, Ch. 286, Sec. 3.)

1705. The provisions of this chapter are not exclusive and do not relieve a person subject to this chapter from the duty to comply with all other laws.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1705.1. The remedies provided in this chapter are not exclusive and shall be in addition to any other remedies or procedures provided in any other law, including Section 17500 of the Business and Professions Code.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1705.2. A waiver by an artist of the provisions of this chapter is deemed contrary to public policy and void and unenforceable. An attempt by a person or a talent service to have an artist waive his or her rights under this chapter is a violation of this chapter.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1705.3. If any provision of this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the chapter and the application of that provision to other persons and circumstances shall not be affected thereby.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

1705.4. Compliance with this chapter does not satisfy and is not a substitute for the requirements mandated by any other applicable law, including the obligation to obtain a license under the Talent Agencies Act (Chapter 4 (commencing with Section 1700)), prior to procuring, offering, promising, or attempting to procure employment or engagements for artists.

(Added by Stats. 2009, Ch. 286, Sec. 3. Effective January 1, 2010.)

Chapter 5. Child Performer Services Permits

(Chapter 5 added by Stats. 2012, Ch. 634, Sec. 1.)

1706. (a) (1) No person shall represent or provide specified services to any artist who is a minor, under 18 years of age, without first submitting an application to the Labor Commissioner for a Child Performer Services Permit and receiving that permit.

(2) The Labor Commissioner shall set forth a filing fee, to be paid by the applicant to the commissioner at the time the application is filed, in an amount sufficient to reimburse the Labor Commissioner for the costs of the permit program. This amount shall be in addition to any charge imposed by the Labor Commissioner pursuant to paragraph (3) of subdivision (c).

(3) (A) The Labor Commissioner shall issue a Child Performer Services Permit to the applicant after he or she has received the application and filing fee and determined from information provided by the Department of Justice that the person is not required to register pursuant to Sections 290 to 290.006, inclusive, of the Penal Code.

(B) After receiving his or her first Child Performer Services Permit, a person shall on a biennial basis renew his or her application by resubmitting his or her name and a new filing fee to the Labor Commissioner in the amount set forth by the Labor Commissioner pursuant to paragraph (2). The Labor Commissioner shall issue a renewed permit to the person after receiving his or her application and filing fee and determining from the subsequent arrest notification provided by the Department of Justice pursuant to subparagraph (D) of paragraph (2) of subdivision (c) that the person is not required to register pursuant to Sections 290 to 290.006, inclusive, of the Penal Code. A person shall not be required to resubmit his or her fingerprints in order to renew his or her permit.

(b) Except for subdivision (f) and Sections 1706.1 to 1706.5, inclusive, when applied to a violation of subdivision (f), this chapter does not apply to the following:

(1) A person licensed as a talent agent as specified in Chapter 4 (commencing with Section 1700), or operating under the license of a talent agent.

(2) A studio teacher certified by the Labor Commissioner as defined in Section 11755 of Title 8 of the California Code of Regulations.

(3) A person whose contact with minor children is restricted to locations where, either by law or regulation, the minor must be accompanied at all times by a parent or guardian, and the parent or guardian must be within sight or sound of the minor.

(4) A person who has only incidental and occasional contact with minor children, unless the person works directly with minor children, has supervision or disciplinary power over minor children, or receives a fee.

(c) (1) Each person required to submit an application to the Labor Commissioner pursuant to paragraph (1) of subdivision (a) shall provide to the Department of Justice electronic fingerprint images and related information required by the department of all permit applicants, for the purposes of obtaining information as to the existence and content of a record of state or federal arrests and convictions, including arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(2) (A) When received, the Department of Justice shall forward the fingerprint images and related information described in paragraph (1) to the Federal Bureau of Investigation and request a federal summary for criminal history information.

(B) (i) The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Labor Commissioner.

(ii) The Department of Justice's response shall provide both state and federal criminal history information pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(C) The Labor Commissioner shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for each person who submitted fingerprint images and the related information pursuant to paragraph (1).

(3) (A) The Department of Justice shall charge the Labor Commissioner a fee sufficient to cover the cost of processing the request described in paragraph (2).

(B) In addition to the filing fee paid by the applicant pursuant to subdivision (a) to reimburse the Labor Commissioner for the costs of the permit program, the Labor Commissioner may charge the applicant a fee sufficient to cover the costs of the fee imposed by the Department of Justice pursuant to subparagraph (A). The amount of the fee imposed pursuant to this subparagraph shall be forwarded by the Labor Commissioner to the Department of Justice with the applicant's name, fingerprints, and other information described in paragraph (1). This fee shall be available to the Department of Justice for the purposes described in subparagraph (A), upon appropriation by the Legislature.

(4) Upon receipt of information from the Department of Justice provided pursuant to subparagraphs (C) and (D) of paragraph (2), the commissioner shall timely cause a copy of the information to be sent to the person who has submitted the application, and shall keep a copy of the information and application on file.

(d) The Labor Commissioner shall maintain a list of all persons holding a valid Child Performer Services Permit issued under this chapter and make this list publicly available on its Internet Web site.

(e) (1) Upon receipt of a valid Child Performer Services Permit, the recipient shall post the permit in a conspicuous place in his or her place of business.

(2) Any person who is a recipient of a valid Child Performer Services Permit shall include the permit number on advertising in print or electronic media, including, but not limited to, Internet Web sites, or in any other medium of advertising.

(f) No person, including a person described in subdivision (b), who is required to register pursuant to Sections 290 to 290.006, inclusive, of the Penal Code may represent or provide specified services to any artist who is a minor.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Artist" means a person who is or seeks to become an actor, actress, model, extra, radio artist, musical artist, musical organization, director, musical director, writer, cinematographer, composer, lyricist, arranger, or other person rendering professional services in motion picture, theatrical, radio, television, Internet, print media, or other entertainment enterprises or technologies.

(2) Except as used in the context of a fee an applicant is required to pay with his or her application, "fee" means any money or other valuable consideration paid or promised to be paid by an artist, by an individual on behalf of an artist, or by a corporation formed on behalf of an artist for services rendered or to be rendered by any person conducting the business of representing artists.

(3) "Person" means any individual, company, society, firm, partnership, association, corporation, limited liability company, trust, or other organization.

(4) To "represent or provide specified services to" means to provide, offer to provide, or advertise or represent as providing, for a fee one or more of the following services:

(A) Photography for use as an artist, including, but not limited to, still photography, digital photography, and video and film services.

(B) Managing or directing the development or advancement of the artist's career as an artist.

(C) Career counseling, career consulting, vocational guidance, aptitude testing, evaluation, or planning, in each case relating to the preparation of the artist for employment as an artist.

(D) Public relations services or publicity, or both, including arranging personal appearances, developing and distributing press packets, managing fan mail, designing and maintaining Internet Web sites, and consulting on media relations.

(E) Instruction, evaluation, lessons, coaching, seminars, workshops, or similar training as an artist, including, but not limited to, acting, singing, dance, voice, or similar instruction services.

(F) A camp for artists, which includes, but is not limited to, a day camp or overnight camp in which any portion of the camp includes any services described in subparagraphs (A) to (E), inclusive.

(h) (1) The Labor Commissioner shall deposit all filing fees described in subdivision (a) into the Labor Enforcement and Compliance Fund to pay for the costs of administering the Child Performer Services Permit program.

(2) On the effective date of the statute adding this subdivision, any moneys in the Child Performer Services Permit Fund and any assets, liabilities, revenues, expenditures, and encumbrances of that fund shall be transferred to the Labor Enforcement and Compliance Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 183. Effective June 27, 2016.)

1706.1. A person who willfully violates any provision of this chapter is guilty of a misdemeanor. Each violation is punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(Added by Stats. 2012, Ch. 634, Sec. 1. Effective January 1, 2013.)

1706.2. The Attorney General, any district attorney, or any city attorney may institute an action for a violation of this chapter, including an action to restrain and enjoin a violation.

(Added by Stats. 2012, Ch. 634, Sec. 1. Effective January 1, 2013.)

1706.3. A person who is injured as a result of any violation of this chapter committed by a person required to obtain a permit pursuant to paragraph (1) of subdivision (a) of Section 1706 may bring an action to recover damages or to restrain and enjoin a violation, or both. The amount of damages that may be awarded for a violation of this chapter is up to three times the damages actually incurred. A final judgment may be satisfied from the bond or deposit maintained by the Labor Commissioner, if any. A person bringing an action under this chapter who prevails shall be awarded reasonable attorney's fees and costs. The court may award punitive damages in addition to any other amounts if it determines, by clear and convincing evidence, that the violation of this chapter was willful.

(Added by Stats. 2012, Ch. 634, Sec. 1. Effective January 1, 2013.)

1706.4. The provisions of this chapter are not exclusive and do not relieve any person subject to this chapter from the duty to comply with all other laws.

(Added by Stats. 2012, Ch. 634, Sec. 1. Effective January 1, 2013.)

1706.5. The remedies provided in this chapter are not exclusive and are in addition to any other remedies or procedures provided in any other law.

(Added by Stats. 2012, Ch. 634, Sec. 1. Effective January 1, 2013.)

Part 7. Public Works And Public Agencies

(Part 7 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Public Works

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

Article 1. Scope and Operation

(Article 1 enacted by Stats. 1937, Ch. 90.)

1720. (a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(7) (A) Infrastructure project grants from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

(B) For purposes of this paragraph, the Public Utilities Commission is not the awarding body or the body awarding the contract, as defined in Section 1722.

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the home buyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars ($25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, and architectural and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142(d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 (commencing with Section 50199.4) of Part 1 of Division 31 of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) Notwithstanding paragraph (1) of subdivision (a), construction, alteration, demolition, installation, or repair work on the electric transmission system located in California constitutes a public works project for the purposes of this chapter.

(f) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(g) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(h) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

(Amended by Stats. 2016, Ch. 86, Sec. 215. Effective January 1, 2017.)

1720.2. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public works" also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

(Amended by Stats. 1980, Ch. 962.)

1720.3. (a) For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

(b) For purposes of this section, the "hauling of refuse" includes, but is not limited to, hauling soil, sand, gravel, rocks, concrete, asphalt, excavation materials, and construction debris. The "hauling of refuse" shall not include the hauling of recyclable metals such as copper, steel, and aluminum that have been separated from other materials at the jobsite prior to transportation and that are to be sold at fair market value to a bona fide purchaser.

(Amended by Stats. 2011, Ch. 676, Sec. 1. Effective January 1, 2012.)

1720.4. This chapter shall not apply to any of the following work:

(a) Any work performed by a volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(1) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(2) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(3) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (A) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (B) by a contractor, other than a corporation qualified under Section 501(c)(3) of

the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(b) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(c) Any work performed by the California Conservation Corps or by Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2024, deletes or extends that date.

(Amended by Stats. 2015, Ch. 53, Sec. 1. Effective January 1, 2016. Repealed as of January 1, 2024, by its own provisions.)

1720.6. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public work" also means any construction, alteration, demolition, installation, or repair work done under private contract when the following conditions exist:

(a) The work is performed in connection with the construction or maintenance of renewable energy generating capacity or energy efficiency improvements.

(b) The work is performed on the property of the state or a political subdivision of the state.

(c) Either of the following conditions exists:

(1) More than 50 percent of the energy generated is purchased or will be purchased by the state or a political subdivision of the state.

(2) The energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a political subdivision of the state.

(Added by Stats. 2011, Ch. 698, Sec. 1. Effective January 1, 2012.)

1720.7. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public works" also means any construction, alteration, demolition, installation, or repair work done under private contract on a project for a general acute care hospital, except on a project for a rural general acute care hospital with a maximum of 76 beds, when the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds, as defined in Section 5870 of the Government Code, issued on or after January 1, 2016, by a public agency. For purposes of this section, "general acute care hospital" and "rural general acute care hospital" have the same meaning as each term is defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(Added by Stats. 2015, Ch. 745, Sec. 1. Effective January 1, 2016.)

1720.9. (a) For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

(b) For purposes of this section, "ready-mixed concrete" means concrete that is manufactured in a factory or a batching plant, according to a set recipe, and then delivered in a liquefied state by mixer truck for immediate incorporation into a project.

(c) For purposes of this section, the "hauling and delivery of ready-mixed concrete to carry out a public works contract" means the job duties for a ready mixer driver that are used by the director in determining wage rates pursuant to Section 1773, and includes receiving the concrete at the factory or batching plant and the return trip to the factory or batching plant.

(d) For purposes of this section, the applicable prevailing wage rate shall be the current prevailing wage, as determined by the director, for the geographic area in which the factory or batching plant is located.

(e) The entity hauling or delivering ready-mixed concrete to carry out a public works contract shall enter into a written subcontract agreement with the party that engaged the entity to supply the ready-mixed concrete. The written agreement shall require compliance with the requirements of this chapter. The entity hauling or delivering ready-mixed concrete shall be considered a subcontractor solely for the purposes of this chapter. Nothing in this section shall cause any entity to be treated as a contractor or subcontractor for any purpose other than the application of this chapter.

(f) The entity hauling or delivering ready-mixed concrete to carry out a public works contract shall submit a certified copy of the payroll records required by subdivision (a) of Section 1776 to the party that engaged the entity and to the general contractor within five working days after the employee has been paid, accompanied by a written time record that shall be certified by each driver for the performance of job duties in subdivision (c).

(g) This section shall not apply to public works contracts that are advertised for bid or awarded prior to July 1, 2016.

(Amended by Stats. 2016, Ch. 31, Sec. 184. Effective June 27, 2016.)

1721. "Political subdivision" includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

(Amended by Stats. 1985, Ch. 239, Sec. 1.)

1722. "Awarding body" or "body awarding the contract" means department, board, authority, officer or agent awarding a contract for public work.

(Enacted by Stats. 1937, Ch. 90.)

1722.1. For the purposes of this chapter, "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

(Amended by Stats. 1982, Ch. 454, Sec. 132.)

1723. "Worker" includes laborer, worker, or mechanic.

(Amended by Stats. 2000, Ch. 954, Sec. 2. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)

1724. "Locality in which public work is performed" means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the political subdivision on whose behalf the contract is awarded in other cases.

(Enacted by Stats. 1937, Ch. 90.)

1725.5. A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of three hundred dollars ($300) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation Insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2) of this subdivision.

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work, as defined in this chapter, entered into on or after April 1, 2015.

(Added by Stats. 2014, Ch. 28, Sec. 62. Effective June 20, 2014.)

1726. (a) The body awarding the contract for public work shall take cognizance of violations of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner.

(b) If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

(c) A contractor may bring an action in a court of competent jurisdiction to recover from an awarding body the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties required to be paid under this chapter, and costs and attorney's fees related to this action, if either of the following is true:

(1) The awarding body previously affirmatively represented to the contractor in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a "public work," as defined in this chapter.

(2) The awarding body received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a "public work," as defined in this chapter, and failed to disclose that information to the contractor before the bid opening or awarding of the contract.

(Amended by Stats. 2003, Ch. 804, Sec. 1. Effective January 1, 2004.)

1727. (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment

based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(Amended by Stats. 2000, Ch. 954, Sec. 4. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)

1728. In cases of contracts with assessment or improvement districts where full payment is made in the form of a single warrant, or other evidence of full payment, after completion and acceptance of the work, the awarding body shall accept from the contractor in cash a sum equal to, and in lieu of, any amount required to be withheld, retained, or forfeited under the provisions of this section, and said awarding body shall then release the final warrant or payment in full.

(Enacted by Stats. 1937, Ch. 90.)

1729. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

(Enacted by Stats. 1937, Ch. 90.)

1730. The Director of Industrial Relations shall post a list of every California code section and the language of those sections that relate to the prevailing rate of per diem wage requirements for workers employed on a public work project on the Internet Web site of the Department of Industrial Relations on or before June 1, 2013, and shall update that list each February 1 thereafter.

(Added by Stats. 2012, Ch. 280, Sec. 1. Effective January 1, 2013.)

1734. Any court collecting any fines or penalties under the criminal provisions of this chapter or any of the labor laws pertaining to public works shall as soon as practicable after the receipt thereof deposit same with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month by warrant of the county auditor drawn upon requisition of the judge or clerk of said court, to the State Treasurer for deposit in the General Fund.

(Amended by Stats. 1953, Ch. 523.)

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

(Amended by Stats. 2004, Ch. 788, Sec. 14. Effective January 1, 2005.)

1736. During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

(Added by Stats. 1999, Ch. 302, Sec. 1. Effective January 1, 2000.)

1740. Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements.

(Added by Stats. 1957, Ch. 1992.)

1741. (a) If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor, or both. The assessment shall be in writing, shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

(b) Interest shall accrue on all due and unpaid wages at the rate described in subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue from the date that the wages were due and payable, as provided in Part 7 (commencing with Section 1720) of Division 2, until the wages are paid.

(c) (1) The Labor Commissioner shall maintain a public list of the names of each contractor and subcontractor who has been found to have committed a willful violation of Section 1775 or to whom a final order, which is no longer subject to judicial review, has been issued.

(2) The list shall include the date of each assessment, the amount of wages and penalties assessed, and the amount collected.

(3) The list shall be updated at least quarterly, and the contractor's or subcontractor's name shall remain on that list until the assessment is satisfied, or for a period of three years beginning from the date of the issuance of the assessment, whichever is later.

(Amended by Stats. 2013, Ch. 792, Sec. 1. Effective January 1, 2014.)

1741.1. (a) The period for service of assessments shall be tolled for the period of time required by the Director of Industrial Relations to determine whether a project is a public work, including a determination on administrative appeal, if applicable, pursuant to subdivisions (b) and (c) of Section 1773.5. The period for service of assessments shall also be tolled for the period of time that a contractor or subcontractor fails to provide in a timely manner certified payroll records pursuant to a request from the Labor Commissioner or a joint labor-management committee under Section 1776, or an approved labor compliance program under Section 1771.5 or 1771.7.

(b) (1) The body awarding the contract for a public work shall furnish, within 10 days after receipt of a written request from the Labor Commissioner, a copy of the valid notice of completion for the public work filed in the office of the county recorder, or a document evidencing the awarding body's acceptance of the public work on a particular date, whichever occurs later, by first-class mail addressed to the office of the Labor Commissioner that is listed on the written request. If, at the time of receipt of the Labor Commissioner's written request, a valid notice of completion has not been filed by the awarding body in the office of the county recorder and there is no document evidencing the awarding body's acceptance of the public work on a particular date, the awarding body shall so notify the office of the Labor Commissioner that is listed on the written request. Thereafter, the awarding body shall furnish copies of the applicable document within 10 days after filing a valid notice of completion with the county recorder's office, or within 10 days of the awarding body's acceptance of the public work on a particular date.

(2) If the awarding body fails to timely furnish the Labor Commissioner with the documents identified in paragraph (1), the period for service of assessments under Section 1741 shall be tolled until the Labor Commissioner's actual receipt of the valid notice of completion for the public work or a document evidencing the awarding body's acceptance of the public work on a particular date.

(c) The tolling provisions in this section shall also apply to the period of time for commencing an action brought by a joint labor-management committee pursuant to Section 1771.2.

(Amended by Stats. 2015, Ch. 303, Sec. 377. Effective January 1, 2016.)

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

(Amended (as amended by Stats. 2006, Ch. 828, Sec. 1) by Stats. 2008, Ch. 402, Sec. 1. Effective January 1, 2009.)

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) Notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The

department shall release the funds in escrow, plus any interest earned, to the persons and entities that are found to be entitled to those funds, within 30 days following either of the specified events occurring:

(1) The conclusion of all administrative and judicial review.

(2) The department receives written notice from the Labor Commissioner or his or her designee of a settlement or other final disposition of an assessment issued pursuant to Section 1741 or from the authorized representative of the awarding body of a settlement or other final disposition of a notice issued pursuant to Section 1771.6.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

(Amended by Stats. 2016, Ch. 345, Sec. 1. Effective January 1, 2017.)

1743. (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

(b) From the amount collected, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

(Added by Stats. 2000, Ch. 954, Sec. 14. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)

Article 1.5. Right of Action

(Article 1.5 added by Stats. 1991, Ch. 906, Sec. 1.)

1750. (a) (1) The second lowest bidder, and any person, firm, association, trust, partnership, labor organization, corporation, or other legal entity which has, prior to the letting of the bids on the public works project in question, entered into a contract with the second lowest bidder, that suffers damage as a proximate result of a competitive bid for a public works project, as defined in subdivision (b), not being accepted due to the successful bidder's violation, as evidenced by the conviction of the successful bidder therefor, of any provision of Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code, may bring an action for damages in the appropriate state court against the violating person or legal entity.

(2) There shall be a rebuttable presumption that a successful bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of this code or of the Unemployment Insurance Code, or of both, was awarded the bid because that successful bidder was able to lower the bid due to this violation or these violations occurring on the contract for public work awarded by the public agency.

(b) For purposes of this article:

(1) "Public works project" means the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement, or renovation of a public building or structure.

(2) "Second lowest bidder" means the second lowest qualified bidder deemed responsive by the public agency awarding the contract for public work.

(3) The "second lowest bidder" and the "successful bidder" may include any person, firm, association, corporation, or other legal entity.

(c) In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees, in an amount to be determined in the court's discretion, to the prevailing party.

(d) For purposes of an action brought pursuant to this section, employee status shall be determined pursuant to Division 4 (commencing with Section 3200) with respect to alleged violations of that division, pursuant to the Unemployment Insurance Code with respect to alleged violations of that code, and pursuant to Section 2750.5 with respect to alleged violations of either Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code.

(e) The right of action established pursuant to this article shall not be construed to diminish rights of action established pursuant to Section 19102 of, and Article 1.8 (commencing with Section 20104.70) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code.

(f) A second lowest bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor Code or of the Unemployment Insurance Code, or both, within one year prior to filing the bid for public work, and who has failed to take affirmative steps to correct that violation or those violations, is prohibited from taking any action authorized by this section.

(Added by Stats. 1991, Ch. 906, Sec. 1.)

Article 2. Wages

(Article 2 enacted by Stats. 1937, Ch. 90.)

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and

the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any workman employed on public work. Nothing in this act shall permit any overtime work in violation of Article 3 of this chapter.

(Amended by Stats. 1976, Ch. 281.)

1771. Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

(Amended by Stats. 1981, Ch. 449, Sec. 1.)

1771.1. (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

(Added by Stats. 2014, Ch. 28, Sec. 63. Effective June 20, 2014.)

1771.2. (a) A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall be commenced not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last.

(b) (1) In an action brought pursuant to this section, the court shall award restitution to an employee for unpaid wages, plus interest, under Section 3289 of the Civil Code from the date that the wages became due and payable, and liquidated damages equal to the amount of unpaid wages owed, and may impose civil penalties, only against an employer that failed to pay the prevailing wage to its employees, in accordance with Section 1775, injunctive relief, or any other appropriate form of equitable relief. The court shall follow the same standards and have the same discretion in setting the amount of penalties as are provided by subdivision (a) of Section 1775. The court shall award a prevailing joint labor-management committee its reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees.

(2) An action pursuant to this section shall not be based on the employer's misclassification of the craft of a worker in its certified payroll records.

(3) Liquidated damages shall be awarded only if the complaint alleges with specificity the wages due and unpaid to the individual workers, including how that amount was calculated, and the defendant fails to pay the wages, deposit that amount with the court to be held in escrow, or provide proof to the court of an adequate surety bond to cover the wages, within 60 days of service of the complaint. Liquidated damages shall be awarded only on the wages found to be due and unpaid. Additionally, if the defendant demonstrates to the satisfaction of the court that the defendant had substantial grounds for contesting that a portion of the allegedly unpaid wages were owed, the court may exercise its discretion to waive the payment of the liquidated damages with respect to that portion of the unpaid wages.

(4) This subdivision does not limit any other available remedies for a violation of this chapter.

(Amended by Stats. 2013, Ch. 792, Sec. 2. Effective January 1, 2014.)

1771.3. (a) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury to be available upon appropriation of the Legislature. All registration fees collected pursuant to Section 1725.5 and any other moneys as are designated by statute or order shall be deposited in the fund for the purposes specified in subdivision (b).

(b) Moneys in the State Public Works Enforcement Fund shall be used only for the following purposes:

(1) The reasonable costs of administering the registration of contractors and subcontractors to perform public work pursuant to Section 1725.5.

(2) The costs and obligations associated with the administration and enforcement of the requirements of this chapter by the Department of Industrial Relations.

(3) The monitoring and enforcement of any requirement of this code by the Labor Commissioner on a public works project or in connection with the performance of public work as defined pursuant to this chapter.

(c) The annual contractor registration renewal fee specified in subdivision (a) of Section 1725.5, and any adjusted application or renewal fee, shall be set in amounts that are sufficient to support the annual appropriation approved by the Legislature for the State Public Works Enforcement Fund and not result in a fund balance greater than 25 percent of the appropriation. Any yearend balance in the fund greater than 25 percent of the appropriation shall be applied as a credit when determining any fee adjustments for the subsequent fiscal year.

(d) To provide adequate cashflow for the purposes specified in subdivision (b), the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, may approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Public Works Enforcement Fund.

(1) The maximum amount of the annual loan allowable may be up to, but shall not exceed 50 percent of the appropriation authority of the State Public Works Enforcement Fund in the same year in which the loan was made.

(2) For the purposes of this section, a "short-term loan" is a transfer that is made subject to both of the following conditions:

(A) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(B) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

(Repealed and added by Stats. 2014, Ch. 28, Sec. 65. Effective June 20, 2014.)

1771.4. (a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) of this section if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) (1) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(2) The requirements of paragraph (3) of subdivision (a) shall only apply to the following projects:

(A) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to the effective date of this section.

(B) Projects for which the initial contract is awarded on or after April 1, 2015.

(C) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records in accordance with paragraph (3) of subdivision (a).

(D) All projects, whether new or ongoing, on or after January 1, 2016.

(Added by Stats. 2014, Ch. 28, Sec. 66. Effective June 20, 2014.)

1771.5. (a) Notwithstanding Section 1771, an awarding body may choose not to require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body has elected to initiate and has been approved by the Director of Industrial Relations to enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(7) The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations.

(d) For purposes of this chapter, the Director of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

(Amended by Stats. 2014, Ch. 28, Sec. 67. Effective June 20, 2014.)

1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

(Repealed and added by Stats. 2000, Ch. 954, Sec. 16. Effective January 1, 2001. Operative July 1, 2001, by Sec. 21 of Ch. 954.)

1771.7. (a) (1) For contracts specified in subdivision (f), an awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, a labor compliance program, then in addition to the requirements described in subdivision (b) of Section 1771.5, the payroll records shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Because the reasonable costs directly related to monitoring and enforcing compliance with the prevailing wage requirements are necessary oversight activities, integral to the cost of construction of the public works projects, notwithstanding Section 17070.63 of the Education Code, the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code for the costs of a new construction or modernization project shall include the state's share of the reasonable and directly related costs of the labor compliance program used to monitor and enforce compliance with prevailing wage requirements.

(f) This section shall only apply to contracts awarded prior to January 1, 2012.

(Amended by Stats. 2014, Ch. 28, Sec. 68. Effective June 20, 2014.)

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

(Amended by Stats. 1992, Ch. 1342, Sec. 7. Effective January 1, 1993.)

1773. The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

(Amended by Stats. 1999, Ch. 30, Sec. 1. Effective January 1, 2000.)

1773.1. (a) Per diem wages, as the term is used in this chapter or in any other statute applicable to public works, includes employer payments for the following:

(1) Health and welfare.

(2) Pension.

(3) Vacation.

(4) Travel.

(5) Subsistence.

(6) Apprenticeship or other training programs authorized by Section 3093, to the extent that the cost of training is reasonably related to the amount of the contributions.

(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.

(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

(9) Other purposes similar to those specified in paragraphs (1) to (5), inclusive; or other purposes similar to those specified in paragraphs (6) to (8), inclusive, if the payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, credit shall not be granted for benefits required to be provided by other state or federal law, for payments made to monitor and enforce laws related to public works if those payments are not made to a program or committee established under the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), or for payments for industry advancement and collective bargaining agreement administrative fees if those payments are not made pursuant to a collective bargaining agreement to which the employer is obligated. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing. However, an increased employer payment contribution that results in a lower hourly straight time or overtime wage shall not be considered a violation of the applicable prevailing wage determination if all of the following conditions are met:

(1) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(2) The basic hourly rate and increased employer payment are no less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the director's general prevailing wage determination.

(3) The employer payment contribution is irrevocable unless made in error.

(d) An employer may take credit for an employer payment specified in subdivision (b), even if contributions are not made, or costs are not paid, during the same pay period for which credit is taken, if the employer regularly makes the contributions, or regularly pays the costs, for the plan, fund, or program on no less than a quarterly basis.

(e) The credit for employer payments shall be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(f) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining

agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever they are filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

(2) When a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

(3) The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

(Amended by Stats. 2016, Ch. 231, Sec. 1. Effective January 1, 2017.)

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.

In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

(Amended by Stats. 1992, Ch. 1342, Sec. 8. Effective January 1, 1993.)

1773.3. (a) (1) An awarding agency shall provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter, within five days of the award.

(2) The notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the department specifies that aids in the administration and enforcement of this chapter.

(b) In lieu of responding to any specific request for contract award information, the department may make the information provided by awarding bodies pursuant to this section available for public review on its Internet Web site.

(Repealed and added by Stats. 2014, Ch. 28, Sec. 70. Effective June 20, 2014.)

1773.4. Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

(Amended by Stats. 1969, Ch. 301.)

1773.5. (a) The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

(b) When a request is made to the director for a determination of whether a specific project or type of work awarded or undertaken by a political subdivision is a public work, he or she shall make that determination within 60 days receipt of the last notice of support or opposition from any interested party relating to that project or type of work that was not unreasonably delayed, as determined by the director. If the director deems that the complexity of the request requires additional time to make that determination, the director may have up to an additional 60 days if he or she certifies in writing to the requestor, and any interested party, the reasons for the extension. If the requestor is not a political subdivision, the requester shall, within 15 days of the request, serve a copy of the request upon the political subdivision, in which event the political subdivision shall, within 30 days of its receipt, advise the director of its position regarding the request. For projects or types of work that are otherwise private development projects receiving public funds, as specified in subdivision (b) of Section 1720, the director shall determine whether a specific project or type of work is a public work within 120 days of receipt of the last notice of support or opposition relating to that project or type of work from any interested party that was not unreasonably delayed, as determined by the director.

(c) If an administrative appeal of the director's determination is made, it shall be made within 30 days of the date of the determination. The director shall issue a determination on the administrative appeal within 120 days after receipt of the last notice of support or opposition relating to that appeal from any interested party that was not unreasonably delayed, as determined by the director. The director may have up to an additional 60 days if he or she certifies in writing to the party requesting the appeal the reason for the extension.

(d) The director shall have quasi-legislative authority to determine coverage of projects or types of work under the prevailing wage laws of this chapter. A final determination on any administrative appeal is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure. These determinations, and any determinations relating to the general prevailing rate of per diem wages and the general prevailing rate for holiday, shift rate, and overtime work, shall be exempt from the Administrative

Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(Amended by Stats. 2013, Ch. 780, Sec. 3. Effective January 1, 2014.)

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.

(Amended by Stats. 1976, Ch. 281.)

1773.7. The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6.

(Repealed and added by Stats. 1976, Ch. 281.)

1773.8. An increased employer payment contribution that results in a lower taxable wage shall not be considered a violation of the applicable prevailing wage determination so long as all of the following conditions are met:

(a) The increased employer payment is made pursuant to criteria set forth in a collective bargaining agreement.

(b) The increased employer payment and hourly straight time and overtime wage combined are no less than the general prevailing rate of per diem wages.

(c) The employer payment contribution is irrevocable unless made in error.

(Added by Stats. 2012, Ch. 827, Sec. 2. Effective January 1, 2013.)

1773.9. (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:

(1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c) (1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of the predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.

(Amended by Stats. 2007, Ch. 482, Sec. 2. Effective January 1, 2008.)

1773.11. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

(1) Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.

(2) Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

(Added by Stats. 2003, Ch. 343, Sec. 1. Effective January 1, 2004.)

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

(Enacted by Stats. 1937, Ch. 90.)

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars ($200) for each calendar day, or portion

thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars ($40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars ($80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars ($120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

(Amended by Stats. 2011, Ch. 677, Sec. 1. Effective January 1, 2012.)

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(Amended by Stats. 2014, Ch. 28, Sec. 71. Effective June 20, 2014.)

1777. Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of section 1776 is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(c) Whenever a contractor or subcontractor performing a public works project has failed to provide a timely response to a request by the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the awarding body to produce certified payroll records pursuant to Section 1776, the Labor Commissioner shall notify the contractor or subcontractor that, in addition to any other penalties provided by law, the contractor or subcontractor will be subject to debarment under this section if the certified payroll records are not produced within 30 days after receipt of the written notice. If the commissioner finds that the contractor or subcontractor has failed to comply with Section 1776 by that deadline, unless the commissioner finds that the failure to comply was due to circumstances outside the contractor's or subcontractor's control, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year and not more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(d) (1) In the event a contractor or subcontractor is determined by the Labor Commissioner to have knowingly committed a serious violation of any provision of Section 1777.5, the Labor Commissioner may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or to be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(2) The Labor Commissioner shall consider, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating Section 1777.5, all of the following circumstances:

(A) Whether the violation was intentional.

(B) Whether the party has committed other violations of Section 1777.5.

(C) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(D) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(E) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(e) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or deliberately refuses to comply with its provisions.

(f) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars ($5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(g) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(h) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(i) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(j) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

(Amended by Stats. 2014, Ch. 297, Sec. 1. Effective January 1, 2015.)

1777.5. (a) This chapter does not prevent the employment of properly registered apprentices upon public works.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However,

the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

(Amended by Stats. 2016, Ch. 746, Sec. 1. Effective January 1, 2017.)

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

(Amended by Stats. 2004, Ch. 788, Sec. 15. Effective January 1, 2005.)

1777.7. (a) (1) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor knowingly violated Section 1777.5, the contractor and any subcontractor responsible for the violation shall forfeit, as a civil penalty to the state or political subdivision on whose behalf the contract is made or awarded, not more than one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance.

(2) In lieu of the penalty provided for in this subdivision, the Labor Commissioner may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d) of Section 1777.5, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) The Labor Commissioner shall consider, in setting the amount of a monetary penalty, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

(c) (1) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties assessed under subdivisions (a) and (b). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(2) For purposes of this section, a determination issued pursuant to subdivision (a) or (b) includes a determination that has been approved by the Labor Commissioner and issued by an awarding body that has been authorized to assist the director in the enforcement of Section 1777.5 pursuant to subdivision (p) of that section. The Labor Commissioner may intervene in any proceeding for review of a determination issued by an awarding body. If the involvement of the Labor Commissioner in a labor compliance program enforcement action is limited to a review of the determination and the matter is resolved without litigation by or against the Labor Commissioner or the department, the awarding body shall enforce any applicable penalties, as specified in this section, and shall deposit any penalties and forfeitures collected in the General Fund.

(d) The determination of the Labor Commissioner as to the amount of the penalty imposed under subdivisions (a) and (b) shall be reviewable only for an abuse of discretion.

(e) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due to the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(f) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the division of a complaint that a subcontractor on that public works project knowingly violated Section 1777.5.

(g) The interpretation of Section 1777.5 and the substantive requirements of this section applicable to contractors or subcontractors shall be in accordance with the regulations of the California Apprenticeship Council.

(h) The Director of Industrial Relations may adopt regulations to establish guidelines for the imposition of monetary penalties.

(Repealed and added by Stats. 2014, Ch. 297, Sec. 3. Effective January 1, 2015.)

1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

(Enacted by Stats. 1937, Ch. 90.)

1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1780. Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a workman on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a "public work," as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a "public work."

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a "public work," as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the "public work" covered by the contract as a "public work," any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any nonconstruction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) "Awarding body" does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) "Increased costs" includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the "public work" as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).

(Added by Stats. 2003, Ch. 804, Sec. 2. Effective January 1, 2004.)

1782. (a) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with the provisions of this article on any public works contract.

(b) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has awarded, within the prior two years, a public works contract without requiring the contractor to comply with all of the provisions of this article. This subdivision shall not apply if the charter city's failure to include the prevailing wage or apprenticeship requirement in a particular contract was inadvertent and contrary

to a city charter provision or ordinance that otherwise requires compliance with this article.

(c) A charter city is not disqualified by subdivision (a) from receiving or using state funding or financial assistance for its construction projects if the charter city has a local prevailing wage ordinance for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements imposed by the provisions of this article and that do not authorize a contractor to not comply with this article.

(d) For purposes of this section, the following shall apply:

(1) A public works contract does not include contracts for projects of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or projects of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work.

(2) A charter city includes any agency of a charter city and any entity controlled by a charter city whose contracts would be subject to this article.

(3) A "construction project" means a project that involves the award of a public works contract.

(4) State funding or financial assistance includes direct state funding, state loans and loan guarantees, state tax credits, and any other type of state financial support for a construction project. State funding or financial assistance does not include revenues that charter cities are entitled to receive without conditions under the California Constitution.

(e) The Director of Industrial Relations shall maintain a list of charter cities that may receive and use state funding or financial assistance for their construction projects.

(f) (1) This section does not restrict a charter city from receiving or using state funding or financial assistance that was awarded to the city prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract that was awarded prior to January 1, 2015.

(2) A charter city is not disqualified by subdivision (b) from receiving or using state funding or financial assistance for its construction projects based on the city's failure to require a contractor to comply with this article in performing a contract the city advertised for bid or awarded prior to January 1, 2015.

(Added by Stats. 2013, Ch. 794, Sec. 2. Effective January 1, 2014.)

1784. (a) Notwithstanding any other law, a contractor may bring an action in a court of competent jurisdiction to recover from the hiring party that the contractor directly contracts with, any increased costs attributable solely to the provisions of this chapter, including, but not limited to, the difference between the wages actually paid to an employee and the wages that were required to be paid to an employee under this chapter, any penalties or other sums required to be paid under this chapter, and costs and attorney's fees for the action incurred by the contractor as a result of any decision by the Department of Industrial Relations, the Labor and Workforce Development Agency, or a court that classifies, after the time at which the hiring party accepts the contractor's bid, awards the contractor a contract under circumstances when no bid is solicited, or otherwise allows construction by the contractor to proceed, the work covered by the project, or any portion thereof, as a "public work," as defined in this chapter, except to the extent that either of the following is true:

(1) The owner or developer or its agent expressly advised the contractor that the work to be covered by the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(2) The hiring party expressly advised the contractor that the work subject to the contract would be a "public work," as defined in this chapter, or is otherwise subject to the payment of prevailing wages.

(b) (1) To be entitled to the recovery of increased costs described in subdivision (a), the contractor shall notify the hiring party and the owner or developer within 30 days after receipt of the notice of a decision by the Department of Industrial Relations or the Labor and Workforce Development Agency, or the initiation of any action in a court alleging, that the work covered by the project, or any portion thereof, is a "public work," as defined in this chapter.

(2) The notice provided pursuant to this subdivision shall set forth the legal name, address, and telephone number of the contractor, and the name, address, and telephone number of the contractor's representative, if any, and shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

(c) A contractor is not required to list any prevailing wages or apprenticeship standard violations on a prequalification questionnaire that are the direct result of the failure of the owner or developer or its agent, or a hiring party, to notify the contractor that the project, or any portion thereof, was a "public work," as defined in this chapter.

(d) This section does not apply to private residential projects built on private property unless the project is built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(e) This section does not apply if the conduct of the contractor caused the project to be a "public work," as defined in this chapter, or if the contractor has actual knowledge that the work is a "public work," as defined in this chapter.

(f) A contractor may seek recovery pursuant to this section only from a hiring party with whom the contractor has a direct contract.

(g) For purposes of this section, "contractor" means a person or entity licensed by the Contractors' State Licensing Board that has a direct contract with the hiring party to provide services on private property or for the benefit of a private owner or developer.

(h) For purposes of this section, "hiring party" means the party that has a direct contract for services provided by the contractor who is seeking recovery pursuant to subdivision (a) on a private works project that was subsequently determined to be a public work by the Department of Industrial Relations or the Labor and Workforce Development Agency, or by the initiation of any action in a court alleging that the work covered by the project, or any portion thereof, was a public work.

(Added by Stats. 2014, Ch. 161, Sec. 1. Effective January 1, 2015.)

Article 3. Working Hours

(Article 3 enacted by Stats. 1937, Ch. 90.)

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

(Enacted by Stats. 1937, Ch. 90.)

1811. The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one

calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

(Amended by Stats. 1963, Ch. 964.)

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

(Amended by Stats. 1988, Ch. 160, Sec. 123.)

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

(Amended (as added by Stats. 1997, Ch. 757, Sec. 6) by Stats. 2002, Ch. 28, Sec. 3. Effective January 1, 2003.)

1814. Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

(Added by renumbering Section 1816 by Stats. 1961, Ch. 238.)

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 11/2 times the basic rate of pay.

(Amended by Stats. 1963, Ch. 964.)

Article 5. Securing Workers' Compensation

(Heading of Article 5 amended by Stats. 1979, Ch. 373.)

1860. The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

(Added by Stats. 1965, Ch. 1000.)

1861. Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(Amended by Stats. 1979, Ch. 373.)

Chapter 2. Public Agencies

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

Article 1. Municipal Employees

(Article 1 enacted by Stats. 1937, Ch. 90.)

1900. Every employee of a city whose hours of labor exceed 120 in a week is entitled to be off duty at least three hours during every twenty-four hours for the purpose of procuring meals. No deduction of salary shall be made by reason thereof.

(Enacted by Stats. 1937, Ch. 90.)

1901. Any officer or agent of a city having supervision and control of employees covered by this article who violates any provision hereof is guilty of a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 4. Firefighters

(Chapter 4 added by Stats. 1959, Ch. 723.)

1960. Neither the State nor any county, political subdivision, incorporated city, town, nor any other municipal corporation shall prohibit, deny or obstruct the right of firefighters to join any bona fide labor organization of their own choice.

(Added by Stats. 1959, Ch. 723.)

1961. As used in this chapter, the term "employees" means the employees of the fire departments and fire services of the State, counties, cities, cities and counties, districts, and other political subdivisions of the State.

(Added by Stats. 1959, Ch. 723.)

1962. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, and to discuss the same with such governing body, through such an organization, but shall not have the right to strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

(Added by Stats. 1959, Ch. 723.)

1963. The enactment of this chapter shall not be construed as making the provisions of Section 923 of this code applicable to public employees.

(Added by Stats. 1959, Ch. 723.)

1964. (a) The governing body of any regularly organized volunteer fire department may, but shall not be required to, adopt regulations governing the removal of volunteer firefighters from the volunteer fire department.

(b) In the event that the governing body chooses to adopt these regulations, it shall have the discretion, after soliciting comments from the membership of the volunteer fire department, to adopt any reasonable regulations which may, but need not, include some or all of the following elements, in addition to other provisions:

(1) Members of the department shall not be removed from membership, except for incompetence, misconduct, or failure to comply with the rules and regulations of the department. Removals, except for absenteeism at fires or meetings, shall be made only after a hearing with due notice, with stated charges, and with the right of the member to a review.

(2) The charges shall be in writing and may be made by the governing body. The burden of proving incompetency or misconduct shall be on the person alleging it.

(3) Hearings on the charges shall be held by the officer or body having the power to remove the person, or by a deputy or employee of the officer or body designated in writing for that purpose.

In case a deputy or other employee is so designated, he or she shall for the purpose of the hearing be vested with all the powers of the officer or body, and shall make a record of the hearing which shall be referred to the officer or body for review with his or her recommendations.

(4) The notice of the hearing shall specify the time and place of the hearing and state the body or person before whom the hearing will be held. Notice and a copy of the charges shall be served personally upon the accused member at least 10 days but not more than 30 days before the date of the hearing.

(5) A stenographer may be employed for the purpose of taking testimony at the hearing.

(6) The officer or body having the power to remove the person may suspend the person after charges are filed and pending disposition of the charges, and after the hearing may remove the person or may suspend him or her for a period of time not to exceed one year.

(7) Volunteer firefighters shall serve a probationary period of a length to be specified by the governing board, not to exceed one year. A probationary volunteer firefighter may be removed from membership without specification of cause. The decision to remove a probationer shall not require notice or a hearing.

(c) The requirement of subdivision (b) to solicit comments from the membership shall not be deemed to create a duty to meet and confer with the membership.

(d) In the event that a governing body of a regularly organized volunteer fire department adopts regulations governing removal of volunteer firefighters, the regulations shall not be interpreted as creating a property right in the volunteer firefighter job or position.

(e) When regulations have been adopted, and where the regulations provide for a hearing and decision by the governing body, a volunteer firefighter may commence a proceeding in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure to set aside the decision of the governing body on the ground that the decision is not supported by substantial evidence. The court shall not employ its independent judgment in reviewing the evidence. The proceeding shall be commenced within 90 days from the date that the governing body renders its decision. This remedy shall be the exclusive method for review of the governing body's decision.

(Added by Stats. 1985, Ch. 499, Sec. 1.)

Part 8. Unemployment Relief

(Part 8 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Extension of Public Works

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

2010. As used in this chapter, "State agency" means any department, division, board, bureau, or commission of the State.

(Enacted by Stats. 1937, Ch. 90.)

2011. The Department of Finance shall ascertain and secure from the several State agencies tentative plans for the extension of public works which are best adapted to supply increased opportunities for advantageous public labor during periods of temporary unemployment. Such plans shall include estimates of the amount, character, and duration of employment, the number of employees who could be profitably employed therein, together with rates of wages and other information which the Department of Finance deems necessary.

(Enacted by Stats. 1937, Ch. 90.)

2012. The department shall keep constantly advised of industrial conditions throughout the State as affecting the employment of labor. Whenever the Governor represents or the division has reason to believe, that a period of extraordinary unemployment caused by industrial depression exists in the state, it shall immediately hold an inquiry into the facts relating thereto, and report to the Governor whether, in fact, such condition exists.

(Amended by Stats. 2012, Ch. 46, Sec. 97. Effective June 27, 2012.)

2013. If the department reports to the Governor that a condition of extraordinary unemployment caused by industrial depression does exist within this state, the Department of Finance may apportion the available Emergency Fund among the several state agencies for the extension of the public works of the state under the charge or direction thereof, in the manner which the Department of Finance believes to be best adapted to advance the public interest by providing the maximum of public employment consistent with the most useful, permanent, and economic extension of public works.

(Amended by Stats. 2012, Ch. 46, Sec. 98. Effective June 27, 2012.)

2014. The Department of Employment Development immediately upon the publication of a finding under this chapter that a period of extraordinary unemployment due to industrial depression exists throughout this state shall prepare approved lists of applicants for public employment, secure full information as to their industrial qualifications, and shall submit the same to the Department of Finance for transmission to the state agencies which avail themselves of the provisions of this chapter.

(Amended by Stats. 1973, Ch. 1207.)

Part 8.5. Car Washes

(Part 8.5 added by Stats. 2003, Ch. 825, Sec. 2.)

Chapter 1. General Provisions

(Chapter 1 added by Stats. 2003, Ch. 825, Sec. 2.)

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2051. As used in this part:

(a) "Car washing and polishing" means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. "Car washing and polishing" does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) "Employer" means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.

(2) "Employer" does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. "Employer" does not include any licensed vehicle dealer or car rental agency that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles. "Employer" does not include either a new motor vehicle dealer, as defined in Section 426 of the Vehicle Code, that is primarily engaged in the business of selling, leasing, renting, or servicing vehicles or an automotive repair dealer, as defined by subdivision (a) of

Section 9880.1 of the Business and Professions Code, who is primarily engaged in the business of repairing and diagnosing malfunctions of motor vehicles. "Employer" does not include any self-service car wash or automated car wash that has employees for cashiering or maintenance purposes only.

(c) "Employee" means any person, including an alien or minor, who renders actual car washing and polishing services in any business for an employer, whether for tips or for wages, and whether wages are calculated by time, piece, task, commission, or other method of calculation, and whether the services are rendered on a commission, concessionaire, or other basis.

(d) "Commissioner" means the Labor Commissioner.

(Amended by Stats. 2009, Ch. 223, Sec. 1. Effective January 1, 2010.)

2052. Every employer shall keep accurate records for three years, showing all of the following:

(a) The names and addresses of all employees engaged in rendering actual services for any business of the employer.

(b) The hours worked daily by each employee, including the times the employee begins and ends each work period.

(c) All gratuities received daily by the employer, whether received directly from the employee or indirectly by deduction from the wages of the employee or otherwise.

(d) The wage and wage rate paid each payroll period.

(e) The age of all minor employees.

(f) Any other conditions of employment.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2053. The Division of Labor Standards and Enforcement shall enforce this chapter. The commissioner may adopt any regulations necessary to carry out the provisions of this chapter.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

Chapter 2. Registration

(Chapter 2 added by Stats. 2003, Ch. 825, Sec. 2.)

2054. Every employer shall register with the commissioner annually.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2055. The commissioner shall not permit any employer to register, or to renew registration, until all of the following conditions are satisfied:

(a) The employer has applied for registration to the commissioner by presenting proof of compliance with the local government's business licensing or regional regulatory requirements.

(b) The employer has obtained a surety bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall not be less than one hundred fifty thousand dollars ($150,000). The employer shall file a copy of the bond with the commissioner.

(1) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be for the benefit of any employee damaged by his or her employer's failure to pay wages, interest on wages, or fringe benefits, or damaged by violation of Section 351 or 353.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send written notice to both the employer and the commissioner, identifying the bond and the date of the cancellation or termination.

(3) An employer shall not conduct any business until the employer obtains a new surety bond and files a copy of it with the commissioner.

(4) This subdivision shall not apply to an employer covered by a valid collective bargaining agreement, if the agreement expressly provides for all of the following:

(A) Wages.

(B) Hours of work.

(C) Working conditions.

(D) An expeditious process to resolve disputes concerning nonpayment of wages.

(c) The employer has documented that a current workers' compensation insurance policy is in effect for the employees.

(d) The employer has paid the fees established pursuant to Section 2059.

(Amended by Stats. 2014, Ch. 71, Sec. 110. Effective January 1, 2015.)

2056. When a certificate of registration is originally issued or renewed under this chapter, the commissioner shall provide related and supplemental information to the registrant regarding business administration and applicable labor laws.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2057. Proof of registration shall be by an official Division of Labor Standards Enforcement registration form. Each employer shall post the registration form where it may be read by the employees during the workday.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2058. At least 30 days prior to the expiration of each registrant's registration, the commissioner shall mail a renewal notice to the last known address of the registrant. However, omission of the commissioner to provide the renewal notice in accordance with this subdivision may not excuse a registrant from making timely application for renewal of registration, may not be a defense in any action or proceeding involving failure to renew registration, and may not subject the commissioner to any legal liability.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2059. (a) (1) The commissioner shall collect from employers a registration fee for each branch location, and, except as provided in paragraph (2), may periodically adjust the registration fee, in an amount sufficient to fund all direct and indirect costs to administer and enforce this part.

(2) The fee established pursuant to paragraph (1) shall not be increased unless the published fund balance is projected to fall below 25 percent of annual expenditures.

(b) In addition to the fee in subdivision (a), each employer shall be assessed an annual fee in an amount equivalent to 20 percent of the registration fee collected pursuant to subdivision (a) for each branch location that shall be deposited in the Car Wash Worker Restitution Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 185. Effective June 27, 2016.)

2060. No employer may conduct any business without complying with the registration and bond requirements of this chapter.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2061. The commissioner may not approve the registration of any employer until all of the following conditions are satisfied:

(a) The employer has executed a written application, in a form prescribed by the commissioner, subscribed, and sworn by the employer containing the following:

(1) The name of the business entity and, if applicable, its fictitious or "doing business as" name.

(2) The form of the business entity and, if a corporation, all of the following:

(A) The date of incorporation.

(B) The state in which incorporated.

(C) If a foreign corporation, the date the articles of incorporation were filed with the California Secretary of State.

(D) Whether the corporation is in good standing with the Secretary of State.

(3) The federal employer identification number (FEIN) and the state employer identification number (SEIN) of the business.

(4) The business' address and telephone number and, if applicable, the addresses and telephone numbers of any branch locations.

(5) Whether the application is for a new or renewal registration and, if the application is for a renewal, the prior registration number.

(6) The names, residential addresses, telephone numbers, and Social Security numbers of the following persons:

(A) All corporate officers, if the business entity is a corporation.

(B) All persons exercising management responsibility in the applicant's office, regardless of form of business entity.

(C) All persons, except bona fide employees on regular salaries, who have a financial interest of 10 percent or more in the business, regardless of the form of business entity, and the actual percent owned by each of those persons.

(7) The policy number, effective date, expiration date, and name and address of the carrier of the applicant business' current workers' compensation coverage.

(8) Whether any persons named in response to subparagraphs (A), (B), or (C) of subparagraph (6) of this section presently:

(A) Owe any unpaid wages.

(B) Have unpaid judgments outstanding.

(C) Have any liens or suits pending in court against himself or herself.

(D) Owe payroll taxes, or personal, partnership, or corporate income taxes, Social Security taxes, or disability insurance.

An applicant who answers affirmatively to any item described in paragraph (8) shall provide, as part of the application, additional information on the unpaid amounts, including the name and address of the party owed, the amount owed, and any existing payment arrangements.

(9) Whether any persons named in response to subparagraphs (A), (B), or (C) of paragraph (6) of this section have ever been cited or assessed any penalty for violating any provision of the Labor Code.

An applicant who answers affirmatively to any item described in paragraph (9) shall provide additional information, as part of the application, on the date, nature of citation, amount of penalties assessed for each citation, and the disposition of the citation, if any. The application shall describe any appeal filed. If the citation was not appealed, or if it was upheld on appeal, the applicant shall state whether the penalty assessment was paid.

(b) The employer has paid a registration fee to the commissioner pursuant to subdivision (d) of Section 2055.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2062. The commissioner may not register or renew the registration of an employer in any of the following circumstances:

(a) The employer has not fully satisfied any final judgment for unpaid wages due to an employee or former employee of a business for which the employer is required to register under this chapter.

(b) The employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code or the Employment Development Department had made an assessment for those unpaid contributions against the employer that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions.

(c) The employer has failed to remit the amount of Social Security and Medicare tax contributions required by the Federal Insurance Contributions Act (FICA) to the Internal Revenue Service and the employer has not fully paid the amount or delinquency for those unpaid contributions.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2063. On the Web site of the Department of Industrial Relations the Labor Commissioner shall post a list of registered car washing and polishing businesses, including the name, address, registration number, and effective dates of registration.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2064. An employer who fails to register pursuant to Section 2054 is subject to a civil fine of one hundred dollars ($100) for each calendar day, not to exceed ten thousand dollars ($10,000), the employer conducts car washing and polishing while unregistered.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

2065. (a) The Car Wash Worker Restitution Fund is established in the State Treasury.

(1) The following moneys shall be deposited into this fund:

(A) The annual fee required pursuant to subdivision (b) of Section 2059.

(B) Fifty percent of the fines collected pursuant to Section 2064.

(C) Pursuant to subdivision (b) of Section 2059, an amount equal to 20 percent of the initial registration fee required pursuant to subdivision (a) of Section 2059.

(2) Upon appropriation by the Legislature, the moneys in the fund shall be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and penalties and other related damages by any employer, to ensure the payment of wages and penalties and other related damages. Any disbursed funds subsequently recovered by the commissioner shall be returned to the fund.

(b) The Car Wash Worker Fund is established in the State Treasury.

(1) The following moneys shall be deposited into this fund:

(A) Fifty percent of the fines collected pursuant to Section 2064.

(B) The initial registration fee required pursuant to subdivision (a) of Section 2059, less the amount specified in subparagraph (C) of paragraph (1) of subdivision (a).

(2) Upon appropriation by the Legislature, the moneys in this fund shall be applied to all direct and indirect costs incurred by the commissioner in administering this part and all direct and indirect costs of enforcement and investigation of the car washing and polishing industry.

(c) The Department of Industrial Relations may establish by regulation those procedures necessary to carry out this section.

(Amended by Stats. 2016, Ch. 31, Sec. 186. Effective June 27, 2016.)

Chapter 3. Successorship

(Chapter 3 added by Stats. 2003, Ch. 825, Sec. 2.)

2066. A successor to any employer that is engaged in car washing and polishing that owed wages and penalties to the predecessor's former employee or employees is liable for those wages and penalties if the successor meets any of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor employer.

(b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.

(Added by Stats. 2003, Ch. 825, Sec. 2. Effective January 1, 2004.)

Chapter 4. Operation

(Article contains no code sections.)

Chapter 5. Reporting

(Chapter 5 added by Stats. 2006, Ch. 656, Sec. 2.)

2068. The commissioner shall study and report to the Legislature, not later than December 31, 2008, on the status of labor law violations and enforcement in the car washing and polishing industry.

(Added by Stats. 2006, Ch. 656, Sec. 2. Effective January 1, 2007.)

Part 9. Health

(Part 9 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Sanitary Conditions

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

Article 1. Sanitary Standards

(Article 1 repealed and added by Stats. 1994, Ch. 486, Sec. 2.)

2260. All employers shall comply with standards relating to sanitary facilities adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1.

(Repealed and added by Stats. 1994, Ch. 486, Sec. 2. Effective January 1, 1995.)

Article 2. Foundries and Metal Shops

(Article 2 enacted by Stats. 1937, Ch. 90.)

2330. The owner or manager of every foundry or metal shop engaged in the casting, fabricating, or working over in any manner of any metal or compound, where one or more persons are employed, shall maintain for the use of the employees wash bowls, sinks or other appliances and a water closet connected with running water.

(Amended by Stats. 1976, Ch. 1171.)

2331. The owner or manager of every foundry or metal shop engaged in the casting, fabricating, or working over in any manner of any metal or compound, where one or more persons are employed, shall comply with standards relating to mechanical ventilation systems adopted by the Occupational Safety and Health Standards Board pursuant to Chapter 6 (commencing with Section 140) of Division 1.

(Repealed and added by Stats. 1994, Ch. 486, Sec. 4. Effective January 1, 1995.)

Article 3. Factories and Business Establishments

(Article 3 enacted by Stats. 1937, Ch. 90.)

2350. Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

(Amended by Stats. 1995, Ch. 91, Sec. 107. Effective January 1, 1996.)

2351. Every factory or workshop in which one or more persons are employed shall be so ventilated while work is carried on that the air will not become injurious to the health of the employees, and shall also be so ventilated as to render harmless, as far as practicable, all injurious gases, vapors, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein.

(Amended by Stats. 1945, Ch. 800.)

2352. No place which the Labor Commissioner condemns as unhealthy and unsuitable, shall be used as a place of employment.

(Amended by Stats. 1943, Ch. 486.)

2353. In any factory, workshop, or other establishment where dust, filaments, or injurious gases are produced or generated, which may be inhaled by employees, the person, under whose authority the work is carried on, shall cause to be provided and used, exhaust fans or blowers with pipes and hoods extending therefrom to each machine, contrivance or apparatus by which dust, filaments or injurious gases are produced or generated. The fans and blowers, and the pipes and hoods, shall be properly fitted and adjusted, and of power and dimensions sufficient to prevent the dust, filaments, or injurious gases from escaping into the atmosphere of any room where employees are at work.

(Enacted by Stats. 1937, Ch. 90.)

2354. Any person violating this article is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment in the county jail for not less than 30 days nor more than 90 days, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 216. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

2355. The Labor Commissioner shall enforce this article.

(Enacted by Stats. 1937, Ch. 90.)

Article 5. General Health Provisions

(Article 5 added by Stats. 1953, Ch. 84.)

2440. All employers shall comply with standards relating to the ready availability of medical services and first aid adopted by the Occupational Safety and Health Standards Board, pursuant to Chapter 6 (commencing with Section 140) of Division 1.

(Repealed and added by Stats. 1994, Ch. 486, Sec. 9. Effective January 1, 1995.)

2441. (a) Every employer of labor in this state shall, without making a charge therefor, provide fresh and pure drinking water to his or her employees during working hours. Access to the drinking water shall be permitted at reasonable and convenient times and places. Any violation of this section is punishable for each offense by a fine of not less than fifty dollars ($50), nor more than two hundred dollars ($200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.

(b) The State Department of Health Services and all health officers of counties, cities, and health districts shall enforce the provisions of this section pursuant to subdivision (b) of Section 118390 of the Health and Safety Code. The enforcement shall not be construed to abridge or limit in any manner the jurisdiction of the Division of Industrial Safety of the Department of Industrial

Relations pursuant to Division 5 (commencing with Section 6300).

(Amended by Stats. 1996, Ch. 1023, Sec. 380. Effective September 29, 1996.)

Part 9.5. Grocery Workers

(Part 9.5 added by Stats. 2015, Ch. 212, Sec. 1.)

2500. (a) Supermarkets and other grocery retailers are the primary points of distribution for food and other daily necessities for the residents of California and are therefore essential to the vitality of every California community.

(b) The state has a compelling interest in ensuring the welfare of the residents of its communities through the maintenance of health and safety standards in grocery establishments.

(c) Experienced grocery retail workers with knowledge of proper sanitation procedures, health regulations and laws, and an experience-based understanding of the clientele and communities in which the retailer is located are essential in furthering this interest and the state's investments in health and safety.

(d) A transitional retention period for grocery retail workers upon change of ownership, control, or operation of grocery stores ensures stability throughout the state for these vital workers, which, in turn, results in preservation of health and safety standards.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2502. For purposes of this part, the following definitions shall apply:

(a) "Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets or a controlling interest, including by consolidation, merger, or reorganization, of the incumbent grocery employer or any person who controls the incumbent grocery employer or any grocery establishment under the operation or control of either the incumbent grocery employer or any person who controls the incumbent grocery employer.

(b) "Eligible grocery worker" means any individual whose primary place of employment is at the grocery establishment subject to a change in control, and who has worked for the incumbent grocery employer for at least six months prior to the execution of the transfer document. "Eligible grocery worker" does not include a managerial, supervisory, or confidential employee.

(c) "Employment commencement date" means the date on which an eligible grocery worker retained by the successor grocery employer pursuant to this part commences work for the successor grocery employer in exchange for benefits and compensation under the terms and conditions established by the successor grocery employer and as required by law.

(d) "Grocery establishment" means a retail store in this state that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales. A grocery establishment does not include a retail store that has ceased operations for six months or more.

(e) "Incumbent grocery employer" means the person that owns, controls, or operates the grocery establishment at the time of the change in control.

(f) "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

(g) "Successor grocery employer" means the person that owns, controls, or operates the grocery establishment after the change in control.

(h) "Transfer document" means the purchase agreement or other document effecting the change in control.

(Amended (as added by Stats. 2015, Ch. 212, Sec. 1) by Stats. 2015, Ch. 305, Sec. 1. Effective January 1, 2016.)

2504. (a) The incumbent grocery employer shall, within 15 days after the execution of the transfer document, provide to the successor grocery employer the name, address, date of hire, and employment occupation classification of each eligible grocery worker.

(b) The successor grocery employer shall maintain a preferential hiring list of eligible grocery workers identified by the incumbent grocery employer pursuant to subdivision (a) and shall hire from that list for a period beginning upon the execution of the transfer document and continuing for 90 days after the grocery establishment is fully operational and open to the public under the successor grocery employer.

(c) If the successor grocery employer extends an offer of employment to an eligible grocery worker pursuant to this part, the successor grocery employer shall retain written verification of that offer for at least three years after the date of the offer. The verification shall include the name, address, date of hire, and employment occupation classification of each eligible grocery worker.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2506. (a) A successor grocery employer shall retain each eligible grocery worker hired pursuant to this part for at least 90 days after the eligible grocery worker's employment commencement date. During this 90-day transition employment period, eligible grocery workers shall be employed under the terms and conditions established by the successor grocery employer and pursuant to the terms of a relevant collective bargaining agreement, if any.

(b) If, within the period established in subdivision (b) of Section 2504, the successor grocery employer determines that it requires fewer eligible grocery workers than were required by the incumbent grocery employer, the successor grocery employer shall retain eligible grocery workers by seniority within each job classification to the extent that comparable job classifications exist or pursuant to the terms of a relevant collective bargaining agreement, if any. Nonclassified eligible grocery workers shall be retained by seniority and according to experience or pursuant to the terms of a relevant collective bargaining agreement, if any.

(c) During the 90-day transition employment period, the successor grocery employer shall not discharge without cause an eligible grocery worker retained pursuant to this part.

(d) At the end of the 90-day transition employment period, the successor grocery employer shall make a written performance evaluation for each eligible grocery worker retained pursuant to this part. If the eligible grocery worker's performance during the 90-day transition employment period is satisfactory, the successor grocery employer shall consider offering the eligible grocery worker continued employment under the terms and conditions established by the successor grocery employer and as required by

law. The successor grocery employer shall retain a record of the written performance evaluation for at least three years.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2508. (a) The incumbent grocery employer shall post public notice of the change in control at the location of the affected grocery establishment within five business days following the execution of the transfer document. Notice shall remain posted during any closure of the grocery establishment and until the grocery establishment is fully operational and open to the public under the successor grocery employer.

(b) Notice shall include, but not be limited to, the name of the incumbent grocery employer and its contact information, the name of the successor grocery employer and its contact information, and the effective date of the change in control.

(c) Notice shall be posted in a conspicuous place at the grocery establishment in a manner to be readily viewed by eligible grocery workers and other employees, customers, and members of the public.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2512. Parties subject to this part may, by collective bargaining agreement, provide that the agreement supersedes the requirements of this part.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2516. This part shall not apply to grocery establishments that will be located in geographic areas designated by the United States Department of Agriculture as a food desert, based on the original food desert measure contained in the Food Access Research Atlas, provided that both of the following apply:

(a) More than six years have elapsed since the most recent grocery establishment was located in the area designated as a food desert.

(b) The grocery establishment stocks and during normal business hours sells fresh fruit and vegetables in amounts and of a quality that is comparable to what the establishment sells in its three geographically closest stores, which are located outside of the food desert.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2518. This part shall not be construed to limit an eligible grocery worker's right to bring legal action for wrongful termination.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2520. This part does not preempt any city, county, or city and county ordinances that provide equal or greater protection to eligible grocery workers.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

2522. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2015, Ch. 212, Sec. 1. Effective January 1, 2016.)

Part 10. Industrial Homework

(Part 10 added by Stats. 1939, Ch. 809.)

2650. As used in this part:

(a) "To manufacture" means to make, process, prepare, alter, repair, or finish in whole or in part, or to assemble, inspect, wrap, or package any articles or materials.

(b) "Employer" means any person who, directly or indirectly or through an employee, agent, independent contractor, or any other person, employs an industrial homeworker.

(c) "Home" means any room, house, apartment, or other premises, whichever is most extensive, used in whole or in part as a place of dwelling; and includes outbuildings upon premises that are primarily used as a place of dwelling, where such outbuildings are under the control of the person dwelling on such premises.

(d) "Industrial homework" means any manufacture in a home of materials or articles for an employer when such articles or materials are not for the personal use of the employer or a member of his or her family.

(e) "Division" means the Division of Labor Standards Enforcement.

(f) "Industrial homeworker" means any person who does industrial homework.

(g) "To employ" means to engage, suffer or permit any person to do industrial homework, or to tolerate, suffer, or permit articles or materials under one's custody or control to be manufactured in a home by industrial homework.

(h) "Person" means any individual, partnership and each partner thereof, corporation, limited liability company, or association.

(Amended by Stats. 1994, Ch. 1010, Sec. 185. Effective January 1, 1995.)

2651. The manufacture by industrial homework of any of the following materials or articles shall be unlawful, and no license or permit issued under this part shall be deemed to authorize such manufacture: articles of food or drink; articles for use in connection with the serving of food or drink; articles of wearing apparel; toys and dolls; tobacco; drugs and poisons; bandages and other sanitary goods; explosives, fireworks, and articles of like character; articles, the manufacture of which by industrial homework is determined by the division to be injurious to the health or welfare of the industrial homeworkers within the industry or to render unduly difficult the maintenance of existing labor standards or the enforcement of labor standards established by law or regulation for factory workers in the industry.

(Amended by Stats. 1975, Ch. 735.)

2652. The division shall have the power to make an investigation of any industry not specifically exempted and made unlawful by Section 2651 which employs industrial homeworkers, in order to determine whether the wages and conditions of employment of industrial homeworkers in the industry are injurious to their health and welfare or whether the wages and conditions of employment of the industrial homeworkers have the effect of rendering unduly difficult the maintenance of existing labor standards or the enforcement of labor standards established by law or regulation for factory workers in the industry.

(Amended by Stats. 1975, Ch. 735.)

2653. To effectuate the provisions of this part, the division shall have the powers given by Article 2 (commencing with Section 11180) of Chapter 2, Part 1, Division 3, Title 2 of the Government Code to a head of a department.

(Amended by Stats. 1957, Ch. 420.)

2654. If, on the basis of information in its possession, with or without an investigation, the division shall find that industrial homework cannot be continued within an industry without injuring the health and welfare of the industrial homeworkers within that industry, or without rendering unduly difficult the maintenance of existing labor standards or the enforcement of labor standards established by law or regulation for factory workers in that industry, the division shall by order declare such industrial homework to be unlawful and require all employers in the industry to discontinue manufacture by industrial homework. The order shall set forth the type or types of manufacturing

which are prohibited after its effective date, and shall contain such terms and conditions as the division may deem necessary to carry out the purpose and intent of this part.

(Amended by Stats. 1975, Ch. 735.)

2655. After making such order the division shall hold a public hearing or hearings at which an opportunity to be heard shall be afforded to any employer, or representative of employers, and any industrial homeworker, or representative of industrial homeworkers, and any other person having an interest in the subject matter of the hearing. A public notice of each hearing shall be given at least 30 days before the hearing is held and in such manner as may be determined by the division. The division shall send written notice of the hearing to every business and employer which the division believes may be adversely affected by the order. The hearing or hearings shall be in such place or places as the division deems most convenient to the employers and industrial homeworkers to be affected by the order.

(Amended by Stats. 1975, Ch. 735.)

2656. The division may seek a search warrant pursuant to the procedures set forth in Chapter 3 (commencing with Section 1523) of Title 12 of Part 2 of the Penal Code to enable it to have access to, and to inspect, the premises of any industrial homeworker or distributor in this state.

(Repealed and added by Stats. 1975, Ch. 735.)

2658. (a) A person shall not employ an industrial homeworker in any industry not prohibited by Section 2651 unless the person employing an industrial homeworker has obtained a valid industrial homework license from the division.

(b) Application for a license to employ industrial homeworkers shall be made to the division in a form as the division may by regulation prescribe. A license fee of one hundred dollars ($100) for each industrial homeworker employed shall be paid to the division and the license shall be valid for a period of one year from the date of issuance unless sooner revoked or suspended.

(c) Renewal fees shall be at the same rate and conditions as the original license.

(d) The division may revoke or suspend the license upon a finding that the person has violated this part or has failed to comply with the regulations of the division or with the license. The industrial homework license shall not be transferable.

(e) All license and permit fees received under this part shall be paid into the Labor Enforcement and Compliance Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 187. Effective June 27, 2016.)

2658.1. Every person who, without having in his possession a then valid industrial homework license issued to him by the Division of Labor Standards Enforcement, negligently fails to prevent articles or materials under his custody or control from being taken to a home for manufacture by industrial homework is guilty of a misdemeanor. Possession, control or custody of articles or materials for the purpose of manufacture by industrial homework by a person other than the owner or operator of a factory shall be presumptive evidence that said owner or operator has negligently failed to prevent articles or materials under his custody or control from being taken to a home for manufacture by industrial homework, where it is established that such owner or operator is entitled to possession, control or custody of such articles.

(Amended by Stats. 1980, Ch. 676.)

2658.5. Every person, which term shall be deemed to include manufacturers, contractors, jobbers and wholesalers, who, without having in his possession a then-valid industrial homework license issued to him by the Division of Labor Standards Enforcement, employs an industrial homeworker, or who tolerates, suffers, or permits articles or materials owned by him, or under his custody or control to be taken to a home for manufacture by industrial homework or who accepts and pays a person for the manufacture in a home of articles and materials by industrial homework, or who places an advertisement for industrial homework the performance of which is not permitted under this part is guilty of a misdemeanor which misdemeanor shall be punished for the first offense by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than 30 days, or by both such fine and imprisonment, and for a second conviction by a fine of not more than five thousand dollars ($5,000) or imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. A person, which term shall be deemed to include manufacturers, contractors, jobbers and wholesalers, convicted for a third time, and any subsequent times, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than thirty thousand dollars ($30,000) or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Upon a third conviction, in addition to any penalties or fines imposed, the business license of the manufacturer or owner of the goods, garments or products produced by industrial homework which is not permitted by this part shall be suspended for a period not to exceed three years. The court may suspend all or a part of any penalty imposed by this section on condition that the defendant refrains from any future or other violation of this part.

(Amended by Stats. 1980, Ch. 676.)

2658.7. Any goods, assembled or partially assembled, whether found in the homeworker's home, in transit to or from the home, or in the manufacturer's or his contractor's possession, pursuant to an order obtained under Section 2656, which constitute evidence of a violation of industrial homework laws, shall be confiscated by the division and properly marked and identified.

A determination or decision that a violation of Section 2651 has been committed shall carry with it, in addition to whatever other penalties are imposed as prescribed in this act, forfeiture of the aforementioned confiscated goods, garments or products identified as goods, garments or products produced by illegal industrial homework, and placed in the custody of the division, which shall be charged with the responsibility of disposing of them.

The division shall have the power to make an investigation of any industry in which the utilization of industrial homework has been made unlawful by Section 2651, in order to determine compliance with Section 2651.

(Amended by Stats. 1980, Ch. 612.)

2659. No person shall engage, suffer or permit any person to do industrial homework, or tolerate, suffer or permit articles or materials under his custody or control to be manufactured by industrial homework by a person who is not in possession of either a valid employer's license or homeworker's permit issued in accordance with this part.

(Amended by Stats. 1957, Ch. 420.)

2660. No person shall do industrial homework within this state unless he has in his possession a valid homeworker's permit issued to him by the division. The permit shall be issued for a fee of twenty-five dollars ($25), and shall be valid for industrial homework performed for the licensed employer of industrial homeworkers, named therein, for a period of one year from the date of its issuance unless sooner revoked or suspended.

Application for a permit shall be made in such form as the division may by regulation prescribe. The permit shall be valid only for work performed by the applicant himself in his own home. The division may waive the fee for a homeworker's permit in cases where the applicant requests such waiver, and can establish that payments of the fee would result in financial hardship.

(Amended by Stats. 1975, Ch. 735.)

2660.1. Every person doing industrial homework, with or without a valid homeworker's permit issued by the division, shall reveal to the division, on demand, the name and address of the employer, the name and address of the owner or source of the articles or materials for industrial homework, the rate of compensation and any other information known to the homeworker and pertinent to the enforcement of this section. This information so revealed by the homeworker to the division shall not be used by the division in any action against or prosecution of the homeworker.

(Added by Stats. 1957, Ch. 420.)

2660.5. Every person who does industrial homework without having in his possession a valid homeworker's permit issued to him by the division is guilty of a misdemeanor which misdemeanor shall be punishable for the first offense by a fine of not more than fifty dollars ($50) and for the second offense by a fine of not more than one hundred dollars ($100). The court may suspend such fine on condition the industrial homeworker cooperates with the division in the lawful prosecutions of persons violating this part and to secure compliance with this part, or on condition the defendant refrains from any future violation of this part.

(Amended by Stats. 1975, Ch. 735.)

2661. No homeworker's permit shall be issued to any person under the age of 16 years; or to any person suffering from an infectious, contagious, or communicable disease, or to any person living in a home that is not clean, sanitary, and free from infectious, contagious, or communicable disease.

(Amended by Stats. 1975, Ch. 735.)

2662. The division may revoke or suspend any homeworker's permit upon a finding that the industrial homeworker is performing industrial homework contrary to the conditions under which the permit was issued or in violation of this part or has permitted any person not holding a valid homeworker's permit to assist him in performing industrial homework or on expiration or revocation of the industrial homework license of the employer.

(Amended by Stats. 1957, Ch. 420.)

2663. No person shall tolerate, suffer or permit any materials or articles to be manufactured by industrial homework unless there has been conspicuously affixed to each article or material or, if this is impossible, to the package or other container in which such goods are kept, a label or other mark of identification bearing the employer's name and address, printed or written legibly in English.

(Amended by Stats. 1957, Ch. 420.)

2664. (a) Any article or material which is being manufactured in a home in violation of any provision of this part may be confiscated by the division. Articles or material confiscated pursuant to this section shall be placed in the custody of the division, which shall be responsible for destroying or disposing of them pursuant to regulations adopted under Section 2666, provided that the articles or material shall not enter the mainstream of commerce and shall not be offered for sale. The division shall, by certified mail, give notice of the confiscation and the procedure for appealing the confiscation to the person whose name and address are affixed to the article or material as provided in this part. The notice shall state that failure to file a written notice of appeal with the Labor Commissioner within 15 days after service of the notice of confiscation shall result in the destruction or disposition of the confiscated article or material.

(b) To contest the confiscation of articles or material, a person shall, within 15 days after service of the notice of confiscation, file a written notice of appeal with the Office of the Labor Commissioner at the address that appears on the notice of confiscation. Within 30 days after the timely filing of a notice of appeal, the Labor Commissioner shall hold a hearing on the appeal. The hearing shall be recorded. Based on the evidence presented at the hearing, the Labor Commissioner may affirm, modify, or dismiss the confiscation, and may order the return of none, some, or all of the confiscated articles or material, under terms that the Labor Commissioner may specify. The decision of the Labor Commissioner shall consist of findings of fact, legal analysis, and an order. The decision shall be served by first-class mail on all parties to the hearing, to the last known address of the parties on file with the Labor Commissioner, within 15 days of the conclusion of the hearing. Service shall be complete pursuant to Section 1013 of the Code of Civil Procedure. Judicial review shall be by petition for writ of mandate, filed with the appropriate court, within 45 days of service of the decision.

(Amended by Stats. 2003, Ch. 214, Sec. 1. Effective January 1, 2004.)

2665. Every person who employs or otherwise avails himself of the services of industrial homeworkers in this State shall:

(a) Comply with the labor standards as provided in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(b) Keep in a manner approved by the division, accurate information as follows:

1. Full name and home address of each industrial homeworker employed by him;

2. Amount and description of materials delivered to each industrial homeworker employed by him with date of delivery, and rate of compensation;

3. Gross amount of compensation paid to each industrial homeworker employed by him and date of payment;

4. Names and addresses of all agents or independent contractors to whom he has delivered materials or articles for manufacture by industrial homework together with quantity, description of materials and date of delivery;

5. Names and addresses of all manufacturers or independent contractors from whom he has received articles or materials for industrial homework together with quantity, description of materials and date of receipt.

(c) Furnish to the division at its request reports or information which the division requires to carry out the provisions of this part. Such reports and information shall be verified as requested by the division.

(Amended by Stats. 1957, Ch. 420.)

2666. The Division of Labor Standards Enforcement shall enforce the provisions of this part. The division and the authorized representatives of the Department of Industrial Relations are authorized and directed to make all inspections and investigations necessary for the enforcement of this part. Every employer shall permit authorized employees of the division free access to his place of business for the purpose of making investigations authorized by this part or necessary to carry out its provisions and permit them to inspect and copy his payroll or other records

or documents relating to the enforcement of this part, or interview his employees or agents. The division may make, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, such rules and regulations as are reasonably necessary to carry out the provisions of this part. The violation of any such rule or regulation shall be deemed a violation of this part.

Every law enforcement officer of the state, any county, municipality, or other government entity who has reason to suspect any violation of this part shall have all the powers of an authorized representative of the Department of Industrial Relations, in the investigation of such suspected violation.

(Amended by Stats. 1980, Ch. 676.)

2667. Unless otherwise provided herein, every person acting either individually or as an officer, agent, employee or independent contractor for another person who violates or refuses or neglects to comply with any provision of this part, or any regulation of the division made in accordance with the provisions of this part is guilty of a misdemeanor.

Whenever the provisions of this part prohibit the employment of a person in certain work or under certain conditions, the employer shall not knowingly permit such person to work with or without compensation.

The Attorney General may seek appropriate injunctive relief consistent with, and in furtherance of the purposes of, this part.

(Amended by Stats. 1975, Ch. 735.)

Part 11. Garment Manufacturing

(Part 11 added by Stats. 1980, Ch. 633.)

Chapter 1. General Provisions

(Chapter 1 added by Stats. 1980, Ch. 633.)

2670. It is the intent of the Legislature, in enacting this part, to establish a system of registration, penalties, confiscation, bonding requirements, and misdemeanors for the imposition of prompt and effective criminal and civil sanctions against violations of, and especially patterns and practices of violations of, any of the laws as set forth herein and regulations of this state applicable to the employment of workers in the garment industry. The civil penalties provided for in this part are in addition to any other penalty provided by law. This part shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health, safety, and peace of the people of the State of California.

(Added by Stats. 1980, Ch. 633.)

2671. As used in this part:

(a) "Person" means any individual, partnership, corporation, limited liability company, or association, and includes, but is not limited to, employers, manufacturers, jobbers, wholesalers, contractors, subcontractors, and any other person or entity engaged in the business of garment manufacturing.

"Person" does not include any person who manufactures garments by himself or herself, without the assistance of a contractor, employee, or others; any person who engages solely in that part of the business engaged solely in cleaning, alteration, or tailoring; any person who engages in the activities herein regulated as an employee with wages as his or her sole compensation; or any person as provided by regulation.

(b) "Garment manufacturing" means sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or any persons contracting to have those operations performed and other operations and practices in the apparel industry as may be identified in regulations of the Department of Industrial Relations consistent with the purposes of this part. The Department of Industrial Relations shall adopt, and may from time to time amend, regulations to clarify and refine this definition to be consistent with current and future industry practices, but the regulations shall not limit the scope of garment manufacturing, as defined in this subdivision.

(c) "Commissioner" means the Labor Commissioner.

(d) "Contractor" means any person who, with the assistance of employees or others, is primarily engaged in sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for another person. "Contractor" includes a subcontractor that is primarily engaged in those operations.

(Amended by Stats. 1999, Ch. 554, Sec. 1. Effective January 1, 2000.)

2672. The commissioner shall promulgate all regulations and rules necessary to carry out the provisions of this part. The commissioner, upon good cause, may impose, in his or her discretion, the terms of penalties, the revocation of registrations, and the confiscation or disposal of goods in accordance with such rules and regulations.

(Added by Stats. 1980, Ch. 633.)

2673. Every employer engaged in the business of garment manufacturing shall keep accurate records for three years which show all of the following:

(a) The names and addresses of all garment workers directly employed by such person.

(b) The hours worked daily by employees, including the times the employees begin and end each work period.

(c) The daily production sheets, including piece rates.

(d) The wage and wage rates paid each payroll period.

(e) The contract worksheets indicating the price per unit agreed to between the contractor and manufacturer.

(f) The ages of all minor employees.

(g) Any other conditions of employment.

(Added by Stats. 1980, Ch. 633.)

2673.1. (a) To ensure that employees are paid for all hours worked, a person engaged in garment manufacturing, as defined in Section 2671, who contracts with another person for the performance of garment manufacturing operations shall guarantee payment of the applicable minimum wage and overtime compensation, as required by law, that are due from that other person to its employees that perform those operations.

(b) Where the work of two or more persons is being performed at the same worksite during the same payroll period, the liability of each person under this guarantee shall be limited to his or her proportionate share, as determined by the Labor Commissioner pursuant to paragraph (3) or (4) of subdivision (d).

(c) Employees may enforce this guarantee solely by filing a claim with the Labor Commissioner against the contractor and the guarantor or guarantors, if known, to recover unpaid wages. Guarantors whose identity or existence is unknown at the time the claim is filed may be added to the claim pursuant to paragraph (2) of subdivision (d).

(d) Claims filed with the Labor Commissioner for payment of wages pursuant to subdivision (c) shall be subject to the following procedure:

(1) Within 10 business days of receiving a claim pursuant subdivision (c), the Labor Commissioner shall give written notice to the employee, the contractor, and persons that may be guarantors of the nature of the claim and the date of the meet-and-confer conference on the claim. Within 10 business days of receiving the claim, the Labor Commissioner shall issue a subpoena duces tecum requiring the contractor to submit to the Labor Commissioner those books and records as may be necessary to investigate the claim and determine the identity of any potential guarantors for the payment of the wage claim, including, but not limited to, invoices for work performed for any and all persons during the period included in the claim. Compliance with such a request for books and records, within 10 days of the mailing of the notice, shall be a condition of continued registration pursuant to Section 2675. At the request of any party, the Labor Commissioner shall provide to that party copies of all books and records received by the Labor Commissioner in conducting its investigation.

(2) Within 30 days of receiving a claim pursuant to subdivision (c), the Labor Commissioner shall send a notice of the claim and of the meet-and-confer conference to any other persons who may be guarantors with respect to the claim.

(3) Within 60 days of receiving a claim pursuant to subdivision (c), the Labor Commissioner shall hold a meet-and-confer conference with the employee, the contractor, and all known potential guarantors to attempt to resolve the claim. Prior to the meet-and-confer conference, the Labor Commissioner shall conduct and complete an investigation of the claim, shall make a finding and assessment of the amount of wages owed, and shall conduct an investigation and determine each guarantor's proportionate share of liability. The investigation shall include, but not be limited to, interviewing the employee and his or her witnesses and making a finding and assessment of back wages due, if any, to the employee. An employee's claim of hours worked and back wages due shall be presumed valid and shall be the Labor Commissioner's assessment, unless the contractor provides specific, compelling, and reliable written evidence to the contrary and is able to produce records pursuant to subdivision (d) of Section 1174 or Section 2673 that are accurate and contemporaneous, itemized wage deduction statements pursuant to Section 226, bona fide complete and accurate payroll records, and evidence of the precise hours worked by the employee for each pay period during the period of the claim. If the Labor Commissioner finds falsification by the contractor of payroll records submitted for any pay period of the claim, any other payroll records submitted by the contractor shall be presumed false and disregarded.

The Labor Commissioner shall present his or her findings and assessment of the amount of wages owed and each guarantor's proportionate share thereof to the parties at the meet-and-confer conference and shall make a demand for payment of the amount of the assessment. If no resolution is reached, the Labor Commissioner shall, at the meet-and-confer conference, set the matter for hearing pursuant to paragraph (4). The Labor Commissioner's assessment, pursuant to this paragraph, of the amount of back wages due is solely for purposes of the meet-and-confer conference and shall not be admissible or be given any weight in the hearing conducted pursuant to paragraph (4). If the Labor Commissioner has not identified any potential guarantors after investigation and the matter is not resolved at the conclusion of the meet-and-confer conference, the Commissioner shall proceed against the contractor pursuant to Section 98.

(4) The hearing shall commence within 30 days of, and shall be completed within 45 days of, the date of the meet-and-confer conference. The hearing may be bifurcated, addressing first the question of liability of the contractor and the guarantor or guarantors, and immediately thereafter the proportionate responsibility of the guarantors. The Labor Commissioner shall present his or her proposed findings of the guarantor's proportionate share at the hearing. Any party may present evidence at the hearing to support or rebut the proposed findings. Except as provided in this paragraph, the hearing shall be held in accordance with the procedure set forth in subdivisions (b) to (h), inclusive, of Section 98. It is the intent of the Legislature that these hearings be conducted in an informal setting preserving the rights of the parties.

(5) Within 15 days of the completion of the hearing, the Labor Commissioner shall issue an order, decision, or award with respect to the claim and shall file the order, decision, or award in accordance with Section 98.1.

(e) An employee shall be entitled to recover, from the contractor, liquidated damages in an amount equal to the wages unlawfully withheld, as set forth in Section 1194.2, and liquidated damages in an amount equal to unpaid overtime compensation due. A guarantor under subdivision (a) shall be liable for its proportionate share of those liquidated damages if the guarantor has acted in bad faith, including, but not limited to, failure to pay or unreasonably delaying payment to its contractor, unreasonably reducing payment to its contractor where it is established that the guarantor knew or reasonably should have known that the price set for the work was insufficient to cover the minimum wage and overtime pay owed by the contractor, asserting frivolous defenses, or unreasonably delaying or impeding the Labor Commissioner's investigation of the claim.

(f) If either the contractor or guarantor refuses to pay the assessment, and the employee prevails at the hearing, the party that refuses to pay shall pay the employee's reasonable attorney's fees and costs. If the employee rejects the assessment of the Labor Commissioner and prevails at the hearing, the employer shall pay the employee's reasonable attorney's fees and costs. The guarantor shall be jointly and severally liable for the contractor's share of the attorney's fees and costs awarded to an employee only if the Labor Commissioner determines that the guarantor acted in bad faith, including, but not limited to, failure to pay, unreasonably delaying payment to the contractor, unreasonably reducing payment to the contractor where it is established that the guarantor knew or reasonably should have known that the price set for the work was insufficient to cover the applicable minimum wage and overtime pay owed by the contractor, asserting frivolous defenses, or unreasonably delaying or impeding the Labor Commissioner's investigation of the claim.

(g) Any party shall have the right to judicial review of the order, decision, or award of the Labor Commissioner made pursuant to paragraph (5) of subdivision (d) as provided in Section 98.2. As a condition precedent to filing an appeal, the contractor or the guarantor, whichever appeals, shall post a bond with the Commissioner in an amount equal to one and one-half times the amount of the award. No bond shall be required of an employee filing an appeal pursuant to Section 98.2. At the employee's request, the Labor Commissioner shall represent the employee in the judicial review as provided in Section 98.4.

(h) If the contractor or guarantor appeals the order, decision, or award of the Labor Commissioner and the employee prevails on appeal, the court shall order the contractor or guarantor, as the case may be, to pay the reasonable attorney's fees and costs of the employee incurred in pursuing his or her claim. If the employee appeals the order, decision, or award of the Labor Commissioner and the contractor or guarantor prevails on appeal, the court may order the employee to pay the reasonable attorney's fees and costs of the contractor employer or guarantor only if the court determines that the employee acted in bad faith in bringing the claim.

(i) The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other provision of state or federal law. If a finding and assessment is not issued as specified and within the time limits in paragraph (3) of subdivision (d), the employee may bring a civil action for the recovery of unpaid wages pursuant to any other rights and remedies under any other provision of the laws of this state unless, prior to the employee bringing the civil action, the guarantor files a petition for writ of mandate within 10 days of the date the assessment should have been issued. If findings and assessments are not made, or a hearing is not commenced or an order, decision, or award is not issued within the time limits specified in paragraphs (4) and (5) of subdivision (d), any party may file a petition for writ of mandate to compel the Labor Commissioner to issue findings and assessments, commence the hearing, or issue the order, decision, or award. All time requirements specified in this section shall be mandatory and shall be enforceable by a writ of mandate.

(j) The Labor Commissioner may enforce the wage guarantee described in this section in the same manner as a proceeding against the contractor. The Labor Commissioner may, with or without a complaint being filed by an employee, conduct an investigation as to whether all the employees of persons engaged in garment manufacturing are being paid minimum wage or overtime compensation and, with or without the consent of the employees affected, commence a civil action to enforce the wage guarantee. Prior to commencing such a civil action and pursuant to rules of practice and procedure adopted by the Labor Commissioner, the commissioner shall provide notice of the investigation to each guarantor and employee, issue findings and an assessment of the amount of wages due, hold a meet-and-confer conference with the guarantors and employees to attempt to resolve the matter, and provide for a hearing.

(k) Except as expressly provided in this section, this section shall not be deemed to create any new right to bring a civil action of any kind for unpaid minimum wages, overtime pay, penalties, wage assessments, attorney's fees, or costs against a registered garment manufacturer based on its use of any contractor that is also a registered garment manufacturer.

(l) The payment of the wage guarantee provided in this section shall not be used as a basis for finding that the registered garment manufacturer making the payment is a joint employer, coemployer, or single employer of any employees of a contractor that is also a registered garment manufacturer.

(m) The Labor Commissioner may, in his or her discretion, revoke the registration under this part of any registrant that fails to pay, on a timely basis, any wages awarded pursuant to this section, after the award has become final.

(Added by Stats. 1999, Ch. 554, Sec. 2. Effective January 1, 2000.)

2674. The Division of Labor Standards Enforcement shall enforce Section 2673 and Chapter 2 (commencing with Section 2675).

(Added by Stats. 1980, Ch. 633.)

2674.1. The commissioner shall appoint an advisory committee on garment manufacturing to advise him or her of common industry problems and to effect liaison between his or her office and various segments of the industry. The committee shall consist of a cross section of the industry and shall include representatives of unions, employees, contractor associations, jobbers, and manufacturers.

(Added by Stats. 1980, Ch. 633.)

2674.2. In the annual budget submitted to the Legislature pursuant to Section 12 of Article IV of the California Constitution, the Governor shall include a detailed statement of the cost of regulation and estimated revenues pursuant to the provisions of this part. The Legislature intends that the fees established and other revenue received pursuant to this part shall provide sufficient funds to meet all state costs incurred pursuant to this part.

(Added by Stats. 1980, Ch. 633.)

Chapter 2. Registration

(Chapter 2 added by Stats. 1980, Ch. 633.)

2675. (a) For purposes of enforcing this part and Sections 204, 209, 212, 221, 222, 222.5, 223, 226, 227, and 227.5, Chapter 2 (commencing with Section 300) and Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of this division, Sections 1195.5, 1197, 1197.5, and 1198, Division 4 (commencing with Section 3200) and Division 4.7 (commencing with Section 6200), every person engaged in the business of garment manufacturing, shall register with the commissioner.

The commissioner shall not permit any person to register, nor shall the commissioner allow any person to renew registration, until all the following conditions are satisfied:

(1) The person has executed a written application therefor in a form prescribed by the commissioner, subscribed and sworn by the person, and containing:

(A) A statement by the person of all facts required by the commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the person proposes to engage in the business of garment manufacturing if the registration is issued.

(B) The names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the proposed business of garment manufacturing together with the amount of their respective interests, except that in the case of a publicly traded corporation a listing of principal officers shall suffice.

(2) The commissioner, after investigation, is satisfied as to the character, competency, and responsibility of the person.

(3) In the case of a person who has been cited and penalized within the prior three years under this part, the person has deposited or has on file a surety bond in the sum and form that the commissioner deems sufficient and adequate to ensure future compliance, not to exceed five thousand dollars ($5,000). The bond shall be payable to the people of California and shall be for the benefit of any employee of a registrant damaged by the registrant's failure to pay wages and fringe benefits, or for the benefit of any employee of a registrant damaged by a violation of Section 2677.5.

(4) The person has documented that a current workers' compensation insurance policy is in effect for the employees of the person seeking registration.

(5) The person has paid an initial or renewal registration fee to the commissioner. The fee for initial registration and for each registration renewal shall be established in an amount determined by the Labor Commissioner to be sufficient to defray the costs of administering this part and shall be based on the applicant's annual volume, but shall be not less than two hundred fifty dollars ($250) and shall be not more than one thousand dollars ($1,000) for contractors and two thousand five hundred dollars ($2,500) for all other registrants.

(b) At the time a certificate of registration is originally issued or renewed, the commissioner shall provide related and supplemental information regarding business administration and applicable labor laws. This related and supplemental information, as much as reasonably possible, shall be provided in the primary language of the garment manufacturer. The information shall include all subject matter on which persons seeking registration are examined pursuant to subdivision (c), and shall be available to persons seeking registration prior to taking this examination.

(c) Effective January 1, 1991, persons seeking registration under this section for the first time, and persons seeking to renew their registration pursuant to subdivision (f), shall comply with all of the following requirements:

(1) Demonstrate, by an oral or written examination, or both, knowledge of the pertinent laws and administrative regulations concerning garment manufacturing as the commissioner deems necessary for the safety and protection of garment workers.

(2) Demonstrate, by an oral or written examination, or both, knowledge of state laws and regulations relating to occupational safety and health which shall include, but not be limited to, the following:

(A) Section 3203 of Title 8 of the California Code of Regulations (Injury Prevention Program).

(B) Section 3220 of Title 8 of the California Code of Regulations (Emergency Action Plan).

(C) Section 3221 of Title 8 of the California Code of Regulations (Fire Prevention Plan).

(D) Section 6151 of Title 8 of the California Code of Regulations which provides for the placement, use, maintenance, and testing of portable fire extinguishers provided for the use of employees.

(3) Sign a statement which provides that he or she shall do all of the following:

(A) Comply with those regulations specified in paragraph (2) which establish minimum standards for securing safety in all places of employment.

(B) Ensure that all employees are made aware of the existence of these regulations and any other applicable laws and are instructed in how to implement the Injury Prevention Program, Emergency Action Plan, and Fire Prevention Plan, specified in paragraph (2), in the workplace.

(C) Ensure that all employees are instructed in the use of portable fire extinguishers.

(D) Post the Injury Prevention Program, Emergency Action Plan, and Fire Prevention Plan, specified in paragraph (2), in a prominent location in the workplace.

(d) The Division of Occupational Safety and Health shall assist the Division of Labor Standards Enforcement in developing the examination which shall include, but not be limited to, the state's occupational safety and health laws specified in paragraph (2) of subdivision (c).

(e) The commissioner shall charge a fee to persons taking the examinations required by subdivision (c) which is sufficient to pay for costs incurred in administering the examinations.

(f) A person seeking renewal of registration shall be required to take both of the examinations, and sign the statement, specified in subdivision (c). However, once a renewal of registration has been granted based on these examinations, subsequent examinations shall only be required at the discretion of the commissioner if, in the preceding year, the registrant has been found to be in violation of subdivision (a) or any of the sections enumerated in that subdivision.

(g) Proof of registration shall be by an official Division of Labor Standards Enforcement registration form. Every person, as set forth in Section 2671, shall post the registration form where it may be read by employees during the workday.

(h) At least 90 days prior to the expiration of each registrant's registration, the commissioner shall mail a renewal notice to the last known address of the registrant. The notice shall include all necessary application forms and complete instructions for registration renewal. However, omission of the commissioner to provide notice in accordance with this subdivision shall not excuse a registrant from making timely application for renewal of registration, shall not be a defense in any action or proceeding involving failure to renew registration, and shall not subject the commissioner to any legal liability under this section.

(Amended by Stats. 1999, Ch. 554, Sec. 3. Effective January 1, 2000.)

2675.2. Whenever an application for renewal of registration is received by the Labor Commissioner 30 days prior to the expiration of the registration, and the Labor Commissioner cannot process the application before the expiration date, the Labor Commissioner may extend the registration for no more than 90 days if the applicant has submitted a complete application, owes no outstanding penalties, owes no back wages, meets all applicable bonding requirements, and meets all other requirements for registration. Upon a showing of extenuating circumstances, the Labor Commissioner may provide such an extension with respect to a renewal application not received 30 or more days prior to expiration.

(Added by Stats. 1996, Ch. 619, Sec. 2. Effective January 1, 1997.)

2675.5. (a) The commissioner shall deposit seventy-five dollars ($75) of each registrant's annual registration fee, required pursuant to paragraph (5) of subdivision (a) of Section 2675, into one separate account. Funds from the separate account shall be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and benefits by any garment manufacturer, jobber, contractor, or subcontractor after exhausting a bond, if any, to ensure the payment of wages and benefits. Any disbursed funds subsequently recovered by the commissioner shall be returned to the separate account.

(b) The remainder of each registrant's annual registration fee not deposited into the special account pursuant to subdivision (a) shall be deposited in a subaccount and applied to costs incurred by the commissioner in administering the provisions of Section 2673.1, Section 2675, and this section, upon appropriation by the Legislature.

(Amended by Stats. 2000, Ch. 127, Sec. 24. Effective July 10, 2000.)

2676. Any person engaged in the business of garment manufacturing who is not registered is guilty of a misdemeanor, except as provided in subdivision (d) of Section 2678.

(Amended by Stats. 1998, Ch. 276, Sec. 1. Effective January 1, 1999.)

2676.5. (a) Every person registered as a garment manufacturer shall display on the front entrance of his or her business premise, and also, if the front entrance is within the interior of a building, on or near the main exterior entrance of the building in which his or her business premise is located, his or her name, address, and garment manufacturing registration number, all in letters not less than three inches high.

(b) The Labor Commissioner may waive the requirements of this section if he or she finds compliance to be unfeasible due to the design or layout of a business premise.

(c) This section shall not apply to a showroom or a building containing a showroom if no garment manufacturing or only incidental garment manufacturing is conducted in the showroom or the building.

(d) As used in this section, "showroom" means a room where merchandise is exposed for sale or where samples are displayed.

(Added by Stats. 1989, Ch. 140, Sec. 1.)

2676.55. (a) Any person who fails to comply with Section 2676.5 shall be subject to a civil penalty, for which a citation may be issued as follows:

(1) For an initial citation, one hundred dollars ($100) for each calendar day that the person engages or has engaged in garment manufacturing, as defined in Section 2671, without complying with Section 2676.5.

(2) For any subsequent citation, two hundred dollars ($200) for each calendar day that the person engages or has engaged in garment manufacturing, as defined in Section 2671, without complying with Section 2676.5.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a person has violated Section 2676.5, the Labor Commissioner may issue a citation to the person in violation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of Section 2676.5 shall be the same as those set out in Section 2681.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

(Added by Stats. 2013, Ch. 308, Sec. 1. Effective January 1, 2014.)

2676.7. Any local agency which issues business licenses or permits shall require, as a condition of issuing any business license or permit for a garment manufacturing business, proof that the person applying for the license or permit is registered pursuant to this chapter. The official Division of Labor Standards Enforcement registration form issued pursuant to Section 2675 shall constitute proof of registration.

A person may apply for a business license or permit prior to registration with the commissioner.

(Added by Stats. 1990, Ch. 172, Sec. 1.)

2677. (a) Any person engaged in the business of garment manufacturing who contracts with any other person similarly engaged who has not registered with the commissioner or does not have a valid bond on file with the commissioner, as required by Section 2675, shall be deemed an employer, and shall be jointly liable with such other person for any violation of Section 2675 and the sections enumerated in that section.

(b) Any employee of a person or persons engaged in garment manufacturing who are not registered as required by this part may bring a civil action against any person deemed to be an employer pursuant to subdivision (a) to recover any wages, damages, or penalties to which the employee may be entitled because of a violation by the unregistered person or persons of any provision specified in subdivision (a) of Section 2675, or may file a claim with the Labor Commissioner pursuant to Section 2673.1. In any civil action brought pursuant to this subdivision, the court shall grant a prevailing plaintiff's reasonable attorney's fees and costs.

(Amended by Stats. 1999, Ch. 554, Sec. 5. Effective January 1, 2000.)

2677.5. It shall be illegal for any person registered pursuant to this chapter and contracting with another registrant to engage in any business practice which causes or is likely to cause a violation of this chapter.

(Added by Stats. 1984, Ch. 1564, Sec. 5.)

2678. (a) A penalty, as provided in subdivision (c), may be imposed against any person for any of the following:

(1) Failure to comply within 15 days of any judgment due for violation of any labor laws applicable to garment industry workers.

(2) Failure to comply with the registration requirements of this part.

(3) Failure to comply with Section 2673 or any section enumerated in Section 2675.

(b) The order imposing the penalty may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. The order shall be in writing and shall describe the nature of the violation, including reference to the statutory provisions, rules, or regulations alleged to have been violated.

(c) The penalties shall be a civil penalty of one hundred dollars ($100) for each affected employee for the initial violation and a civil penalty of two hundred dollars ($200) for each affected employee for the second or subsequent violation.

(d) If a person is subject to civil penalties for a violation described in subdivision (a), but does not employ one or more workers, the civil penalty shall be five hundred dollars ($500), and the person shall not be guilty of a misdemeanor as specified in Section 2676.

(Amended by Stats. 1998, Ch. 276, Sec. 2. Effective January 1, 1999.)

2679. (a) The commissioner, in addition to any civil penalty imposed pursuant to Section 2679, may require that as a condition of continued registration, such employer deposit with him or her within 10 days a bond to ensure payment of wages and benefits in such sum and form as the commissioner may deem sufficient and adequate in the circumstances but not to exceed ten thousand dollars ($10,000). The bond shall be payable to the commissioner and shall provide that the employer shall pay his or her employees in accordance with the provisions of Section 2675. In lieu of the deposit of a bond, the commissioner, in his or her discretion, may accept other evidence of financial security sufficient to guarantee payment of wages to affected employees.

(b) The commissioner, in addition to any civil penalty imposed, shall require a bond as set forth in subdivision (a) upon any second or subsequent violation within any two-year period. The commissioner may revoke the registration of any person for any period ranging from 30 days to one year upon a third or subsequent violation within any two-year period and may confiscate any garment or wearing apparel, assembled or partially assembled, if the violation relates to minimum wages, child labor, or maximum hours of labor. If the commissioner does exercise the authority to confiscate upon such a third or subsequent violation, the commissioner shall notify persons for whom assembly is performed and shall provide for the return of such garment owner's confiscated garments or wearing apparel upon such assumption and satisfaction of liability for the violation.

(Added by Stats. 1980, Ch. 633.)

2680. (a) Any garment or wearing apparel, assembled or partially assembled by or on behalf of any person who has not

complied with the registration requirements of this part, may be confiscated by the Division of Labor Standards Enforcement. Garments and wearing apparel confiscated pursuant to this section shall be placed in the custody of the division, which shall be charged with the responsibility of destroying or disposing of them pursuant to regulations adopted under Section 2672, provided that the goods shall not enter the mainstream of commerce and shall not be offered for sale. The division shall, by registered mail and telephone, give notice of the removal and the location where the confiscated goods are held in custody to the known manufacturer and contractor.

(b) If the person from whom garments or wearing apparel are confiscated pursuant to subdivision (a) was providing the confiscated garments or wearing apparel as a contractor and has previously, within the immediately preceding five-year period, had garments or wearing apparel confiscated pursuant to subdivision (a), the Labor Commissioner may, in addition to the remedies set forth in subdivision (a), confiscate the means of production, including all manufacturing equipment and the property where the current unregistered garment manufacturing operations have taken place. This subdivision does not apply where nonregistration of the contractor was due to delayed renewal of registration.

(c) The proceeds from the sale of any equipment or property under subdivision (b) shall be deposited into a single account in the General Fund, to be known as the Back Wages and Taxes Account. At the Labor Commissioner's discretion, and upon appropriation by the Legislature, funds from that account may be disbursed to pay back wages owed to garment workers, including, but not limited to, workers of the unregistered contractor whose violation caused the confiscation, and for the payment of taxes.

(Amended by Stats. 1999, Ch. 554, Sec. 6. Effective January 1, 2000.)

2680.5. The commissioner shall have the authority to investigate and mediate pricing and quality disputes arising out of written contracts between manufacturers and contractors in the garment industry.

(Added by Stats. 1984, Ch. 1564, Sec. 7.)

2681. (a) Any person against whom a penalty is assessed or whose goods are confiscated shall, in lieu of contesting the penalty or the confiscation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after the issuance of the citation.

(b) If a person desires to contest an assessment of a penalty or the confiscation of goods, he or she shall, within 15 business days after service of the citation or confiscation of the goods, or both, petition, in writing, the office of the Labor Commissioner which appears on the citation or on the receipt for the confiscated goods of his or her request for an informal hearing. The Labor Commissioner or his or her deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the penalty set forth in the citation or the issue of the confiscation of the goods, or both, shall be affirmed, modified, or dismissed. If confiscated goods are involved, the hearing shall be held within 10 days. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ must be taken within 45 days of service of the notice of findings, findings, and order thereon.

(c) When no petition objecting to a citation or the proposed assessment of a civil penalty or confiscation of goods, or both, is filed, a certified copy of the citation or proposed civil penalty may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the citation or proposed assessment of a civil penalty.

(d) When findings and the order thereon are made affirming or modifying a citation or proposed assessment of a civil penalty after hearing, a certified copy of these findings and the order entered thereon may be entered by the Labor Commissioner in the office of the clerk of the superior court in any county in which the person assessed has property or in which the person assessed has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him or her.

(Repealed and added by Stats. 1988, Ch. 96, Sec. 12.)

2682. Moneys recovered under this chapter shall be applied first to payment of wages due affected employees. If insufficient funds are withheld or recovered, the money shall be prorated among all such workers. Any remainder shall be paid to the General Fund of the state.

(Added by Stats. 1980, Ch. 633.)

2684. (a) The Legislature finds and declares that persons who are primarily engaged in sewing or assembly of garments for other persons engaged in garment manufacturing frequently close down their sewing shops to avoid paying their employees' wages and subsequently reopen under the conditions described in subdivision (b), and are more likely to do so than are other types of persons engaged in garment manufacturing.

(b) A successor to any employer that is primarily engaged in sewing or assembly of garments for other persons engaged in the business of garment manufacturing, as defined by subdivision (b) of Section 2671, that owes wages to the predecessor's former employee or employees is liable for those wages if the successor meets any of the following criteria:

(1) Uses substantially the same facilities or work force to produce substantially the same products for substantially the same type of customers as the predecessor employer.

(2) Shares in the ownership, management, control of labor relations, or interrelations of business operations with the predecessor employer.

(3) Has in its employ in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(4) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer or of any person who had a financial interest in the predecessor employer.

This section does not impose liability upon a successor for the guarantee of unpaid minimum wages and overtime compensation set forth in subdivision (a) or (b) of Section 2673.1.

(Added by Stats. 1999, Ch. 554, Sec. 7. Effective January 1, 2000.)

Chapter 3. Arbitration

(Chapter 3 added by Stats. 1980, Ch. 633.)

2685. The commissioner shall establish, in accordance with the provisions of this chapter, procedures for mandatory arbitration of pricing and product quality disputes arising out of written contracts between manufacturers and contractors.

(Added by Stats. 1980, Ch. 633.)

2686. Upon the written request of any manufacturer or contractor, the California State Mediation and Conciliation Service shall notify the other party to the dispute of the request for arbitration and shall, within seven days of receipt of the request, appoint an arbitration panel to hear and render a decision regarding the dispute. The panel shall be constituted as follows:

(a) A management level representative from a manufacturer in the general geographic area in which the dispute arises, provided that insofar as possible the manufacturer shall not be a direct competitor of the manufacturer involved in the dispute to be arbitrated. This panel member also shall be selected in accordance with the terms of the written contract.

(b) A representative from the contractors' association whose membership encompasses the general geographic area in which the dispute arises. This panel member also shall be selected in accordance with the terms of the written contract.

(c) A third party to be chosen and agreed upon by the first two parties to the dispute from a list of arbitrators provided by the American Arbitration Association. This party shall act as chairperson of the panel.

(Amended by Stats. 2012, Ch. 46, Sec. 99. Effective June 27, 2012.)

2687. Within seven days of appointment, the chairperson of the panel shall notify the parties in writing of the date, time, and location of the hearing before the panel. The hearing date shall be scheduled no later than 21 days after the filing of the request for arbitration, provided, however, that each party shall have no less than five days notice prior to the hearing date.

(Added by Stats. 1980, Ch. 633.)

2688. On the date and time specified in the hearing notice, the chairperson shall convene the hearing and shall determine whether each party is represented. If neither party is represented, the arbitration shall be terminated, with costs assigned to the party requesting arbitration, and the parties shall forfeit any further rights under this section relating to the dispute for which arbitration was requested. In the event only one party is in attendance, the arbitration shall proceed and the panel shall make its award based upon the evidence presented. Appearance at the hearing by a party shall be deemed to waive any alleged defect in notice.

(Added by Stats. 1980, Ch. 633.)

2689. To facilitate the conduct of the hearing, the following procedures shall govern:

(a) Upon good cause shown by a party, the chairperson shall be empowered to issue subpoenae duces tecum and ad testificandum.

(b) Each party may be represented by an attorney at the party's own expense.

(c) The formal rules of evidence shall not be applicable, but any relevant evidence shall be admitted if it is evidence upon which responsible persons would rely in the conduct of serious business affairs.

(d) All testimony shall be taken under oath.

(e) No formal written records shall be kept unless one or both parties agree to employ at their own expense a qualified court reporter for that purpose. In such case, a copy of the record shall be provided to the panel and a copy shall be made available to the other party at the standard cost for such additional copies.

(f) Those in attendance at the hearing shall be limited to the panel, the parties and their counsel, a court reporter, interpreters when requested by a party or the panel, and witnesses while testifying.

(g) Upon the request of a panel member, the panel may allow a period, not to exceed three days following the conclusion of the hearing, during which time a party may submit otherwise admissible evidence not available during the course of the hearing.

(Added by Stats. 1980, Ch. 633.)

2690. Within 15 days after the conclusion of the hearing, the panel shall make a written award, which shall determine all questions submitted for arbitration. All decisions of the panel shall be by majority vote and the award shall be signed by the members concurring therein. The panel immediately shall provide written notice of the award to the parties and to the commissioner.

(Added by Stats. 1980, Ch. 633.)

2691. Within 10 days of receipt of notice of the award, the party or parties who are required to comply with the terms of the award shall so comply and file proof of such compliance with the commissioner or shall file a notice of appeal with the superior court for the county in which the hearing was held. Upon the filing of such an appeal, a trial de novo shall be held, provided, however, that the decision reached by the panel as stated in the award shall be received as evidence by the trial court.

(Amended by Stats. 2002, Ch. 784, Sec. 525. Effective January 1, 2003.)

2692. The basic costs of the arbitration proceeding, including interpreters requested by the panel, shall be borne equally by all parties to the proceeding, provided, however, that the panel may as a part of its award impose all such costs on the party requesting arbitration if a majority of the panel determines that the matter brought before it was frivolous. In addition, in the case of a frivolous claim the panel may impose upon the party requesting arbitration the costs of translators, court reporters, and reasonable attorneys fees incurred by the other party.

(Added by Stats. 1980, Ch. 633.)

Part 12. Sheepherders

(Part 12 added by Stats. 2001, Ch. 948, Sec. 1.)

2695.1. (a) In enacting this legislation, it is the intent of the Legislature to codify certain labor protections that should be afforded to sheepherders, as defined. The provisions of this section are in addition to, and are entirely independent from, any other statutory or legal protections, rights, or remedies that are or may be available under this code or any other state law or regulation to sheepherders either as individuals, employees, or persons.

(b) All terms used in this section and in Section 2695.2 have the meanings assigned to them by this code or any other state law or regulation.

(Amended by Stats. 2002, Ch. 664, Sec. 162.5. Effective January 1, 2003.)

2695.2. (a) (1) For a sheepherder employed on a regularly scheduled 24-hour shift on a seven-day-a-week "on-call" basis, an

employer may, as an alternative to paying the minimum wage for all hours worked, instead pay no less than the monthly minimum wage adopted by the Industrial Welfare Commission on April 24, 2001. Any sheepherder who performs nonsheepherding, nonagricultural work on any workday shall be fully covered for that workweek by the provisions of any applicable laws or regulations relating to that work.

(2) After July 1, 2002, the amount of the monthly minimum wage permitted under paragraph (1) shall be increased each time that the state minimum wage is increased and shall become effective on the same date as any increase in the state minimum wage. The amount of the increase shall be determined by calculating the percentage increase of the new rate over the previous rate, and then by applying the same percentage increase to the minimum monthly wage rate.

(b) (1) When tools or equipment are required by the employer or are necessary to the performance of a job, the tools and equipment shall be provided and maintained by the employer, except that a sheepherder whose wages are at least two times the minimum wage provided herein, or if paid on a monthly basis, at least two times the monthly minimum wage, may be required to provide and maintain handtools and equipment customarily required by the trade or craft.

(2) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of paragraph (1) upon issuance of a receipt to the sheepherder for the deposit. The deposits shall be made pursuant to Article 2 (commencing with Section 400) of Chapter 3. Alternatively, with the prior written authorization of the sheepherder, an employer may deduct from the sheepherder's last check the cost of any item furnished pursuant to paragraph (1) when the item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the sheepherder upon completion of the job.

(c) No employer of sheepherders shall employ a sheepherder for a work period of more than five hours without a meal period of no less than 30 minutes, except that when a work period of not more than six hours will complete a day's work, the meal period may be waived by the mutual consent of the employer and the sheepherder. An employer may be relieved of this obligation if a meal period of 30 minutes cannot reasonably be provided because no one is available to relieve a sheepherder tending flock alone on that day. Where a meal period of 30 minutes can be provided but not without interruption, a sheepherder shall be allowed to complete the meal period during that day.

(d) To the extent practicable, every employer shall authorize and permit all sheepherders to take rest periods. The rest period, insofar as is practicable, shall be in the middle of each work period. The authorized rest times shall be based on the total hours worked daily at the rate of 10 minutes net rest time per four hours, or major fraction thereof, of work. However, a rest period need not be authorized for sheepherders whose total daily worktime is less than three and one-half hours.

(e) When the nature of the work reasonably permits the use of seats, suitable seats shall be provided for sheepherders working on or at a machine.

(f) After January 1, 2003, during times when a sheepherder is lodged in mobile housing units where it is feasible to provide lodging that meets the minimum standards established by this section because there is practicable access for mobile housing units, the lodging provided shall include at a minimum all of the following:

(1) Toilets and bathing facilities, which may include portable toilets and portable shower facilities.

(2) Heating.

(3) Inside lighting.

(4) Potable hot and cold water.

(5) Adequate cooking facilities and utensils.

(6) A working refrigerator, which may include a butane or propane gas refrigerator, or for no more than a one-week period during which a nonworking refrigerator is repaired or replaced, a means of refrigerating perishable food items, which may include ice chests, provided that ice is delivered to the sheepherder, as needed, to maintain a continuous temperature required to retard spoilage and ensure food safety.

(g) After January 1, 2003, all sheepherders shall be provided with all of the following at each worksite:

(1) Regular mail service.

(2) A means of communication through telephone or radio solely for use in a medical emergency affecting the sheepherder or for an emergency relating to the herding operation. If the means of communication is provided by telephone, the sheepherder may be charged for the actual cost of nonemergency telephone use. Nothing in this subdivision shall preclude an employer from providing additional means of communication to the sheepherder which are appropriate because telephones or radios are out of range or otherwise inoperable.

(3) Visitor access to the housing.

(4) Upon request and to the extent practicable, access to transportation to and from the nearest locale where shopping, medical, or cultural facilities and services are available on a weekly basis.

(h) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates or causes to be violated the provisions of this section shall be subject to a civil penalty, as follows:

(1) For the initial violation, fifty dollars ($50) for each underpaid employee for each pay period during which the employee was underpaid, plus an amount sufficient to recover the unpaid wages.

(2) For any subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period during which the employee was underpaid, plus an amount sufficient to recover the unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

(i) If the application of any provision of any subdivision, sentence, clause, phrase, word, or portion of this legislation is held invalid, unconstitutional, unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected and shall continue to be given full force and effect as if the part held invalid or unconstitutional had not been included.

(j) Every employer of sheepherders shall post a copy of this part in an area frequented by sheepherders where it may be easily read during the workday. Where the location of work or other conditions make posting impractical, every employer shall make a copy of this part available to sheepherders upon request. Copies of this part shall be posted and made available in a language understood by the sheepherder. An employer is deemed to have complied with this subdivision if he or she posts where practical, or makes available upon request where posting is impractical, a copy of the Industrial Welfare Commission Order 14-2001, as adopted on April 24, 2001, relating to sheepherders, provided

that the posted material includes a sufficient summary of each of the provisions of this part.

(Amended by Stats. 2002, Ch. 664, Sec. 163. Effective January 1, 2003.)

Part 13. The Labor Code Private Attorneys General Act Of 2004

(Part 13 added by Stats. 2003, Ch. 906, Sec. 2.)

2698. This part shall be known and may be cited as the Labor Code Private Attorneys General Act of 2004.

(Added by Stats. 2003, Ch. 906, Sec. 2. Effective January 1, 2004.)

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e) (1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l) (1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.

(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under

this code shall be submitted to the agency within 10 days after entry of the judgment or order.

(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

(Amended by Stats. 2016, Ch. 31, Sec. 189. Effective June 27, 2016.)

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency, during the course of its investigation, determines that additional time is necessary to complete the investigation, it may extend the time by not more than 60 additional calendar days and shall issue a notice of the extension. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(D) The time limits prescribed by this paragraph shall only apply if the notice required by paragraph (1) is filed with the agency on or after July 1, 2016. For notices submitted prior to July 1, 2016, the time limits in effect on the postmark date of the notice shall apply.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

(e) This section shall remain in effect only until July 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2021, deletes or extends that date.

(Amended by Stats. 2016, Ch. 31, Sec. 190. Effective June 27, 2016. Repealed as of July 1, 2021, by its own provisions. See later operative version added by Sec. 191 of Stats. 2016, Ch. 31.)

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

(e) This section shall become operative on July 1, 2021.

(Repealed (in Sec. 190) and added by Stats. 2016, Ch. 31, Sec. 191. Effective June 27, 2016. Section operative July 1, 2021, by its own provisions.)

2699.5. The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

(Amended by Stats. 2015, Ch. 445, Sec. 3. Effective October 2, 2015.)

Division 3. Employment Relations

(Division 3 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Scope of Division

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

2700. The provisions of this division shall not limit, change, or in any way qualify the provisions of Divisions 4 and 4.5 of this code, but shall be fully operative and effective in all cases where the provisions of Divisions 4 and 4.5 are not applicable.

(Amended by Stats. 1957, Ch. 48.)

Chapter 2. Employer and Employee

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

Article 1. The Contract of Employment

(Article 1 enacted by Stats. 1937, Ch. 90.)

2750. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

(Enacted by Stats. 1937, Ch. 90.)

2750.5. There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, or who is performing such services for a person who is required to obtain such a license is an employee rather than an independent contractor. Proof of independent contractor status includes satisfactory proof of these factors:

(a) That the individual has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.

(b) That the individual is customarily engaged in an independently established business.

(c) That the individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.

In addition to the factors contained in subdivisions (a), (b), and (c), any person performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall hold a valid contractors' license as a condition of having independent contractor status.

For purposes of workers' compensation law, this presumption is a supplement to the existing statutory definitions of employee and independent contractor, and is not intended to lessen the coverage of employees under Division 4 and Division 5.

(Amended by Stats. 1979, Ch. 605.)

2750.6. There is a rebuttable presumption affecting the burden of proof that a physician and surgeon, licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, who enters into a contract for the performance of health services on behalf of a licensed primary care clinic, as defined in paragraph (1) of subdivision (a) of Section 1204 of the Health and Safety Code, is an independent contractor rather than an employee. Nothing in this section shall authorize the employment of a physician and surgeon to provide professional services when the employment would violate any other provision of law.

(Added by Stats. 1984, Ch. 783, Sec. 1.)

2750.8. (a) The Labor Commissioner and the Employment Development Department shall administer the Motor Carrier Employer Amnesty Program pursuant to which, notwithstanding any law, an eligible motor carrier performing drayage services at any port shall be relieved of liability for statutory or civil penalties associated with the misclassification of commercial drivers as independent contractors, as provided by this program, if the eligible motor carrier executes a settlement agreement with the Labor Commissioner whereby the eligible motor carrier agrees to, among other things, properly classify all of its commercial drivers as employees.

(b) As used in this section, the following terms shall have the following meanings:

(1) "Commercial driver" means a person who holds a valid commercial driver's license who is hired or contracted to provide port drayage services.

(2) "Department" means the Employment Development Department.

(3) "Eligible motor carrier" means a motor carrier that shall not have any of the following on the date it applies to participate in the program:

(A) A civil lawsuit that was filed on or before December 31, 2015, pending against it in a state or federal court that alleges or involves a misclassification of a commercial driver.

(B) A penalty assessed by the department pursuant to Section 1128 of the Unemployment Insurance Code that is final imposition of that penalty.

(4) "Motor carrier" means a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as set forth in subdivision (b) of Section 15210 of the Vehicle Code, that operates or directs the operation of a commercial motor vehicle on a for-hire or not-for-hire basis to perform port drayage services.

(5) "Port" means any sea or river port located in this state.

(6) "Program" means the Motor Carrier Employer Amnesty Program established by this section and as provided by Article 8.6 (commencing with Section 1160) of Chapter 4 of Part 1 of Division 1 of the Unemployment Insurance Code.

(c) (1) A motor carrier shall only apply to participate in the program by doing all of the following:

(A) Submit an application to the Labor Commissioner, on a form provided by the Labor Commissioner. The application shall, at a minimum, require the motor carrier to establish it qualifies as an eligible motor carrier.

(B) Report on the results of a self-audit in accordance with the guidelines provided by the Labor Commissioner.

(2) A motor carrier that voluntarily or as a result of a final disposition in a civil proceeding reclassified its commercial drivers as employees on or before January 1, 2016, shall, in addition to other information requested by the Labor Commissioner, also submit with its application all of the following:

(A) Documentation demonstrating that the motor carrier reclassified its commercial drivers as employees, including the commencement period applicable to the reclassification.

(B) The identification of each commercial driver reclassified in the documents provided in subparagraph (A), the amounts paid to each commercial driver to compensate for the previous misclassification, and the time period applicable to the amount paid to each commercial driver prior to reclassification.

(C) A report of a self-audit for all commercial drivers reclassified by the motor carrier identified in subparagraphs (A) and (B), and also include a separate self-audit report for any commercial driver who is subject to reclassification, but is not identified in subparagraph (B).

(3) A proceeding or action against a motor carrier pursuant to Sections 2698 to 2699.5, inclusive, shall not be initiated after the motor carrier has submitted an application for participation in the program, but may be initiated if the motor carrier's application is denied.

(4) If a motor carrier's application to participate in the program is denied by the Labor Commissioner, the application or its submission shall not be considered an acknowledgment or admission by the motor carrier that it misclassified its commercial drivers as independent contractors, and the application or its submission shall not be construed in any way to support an evidentiary inference that the motor carrier failed to properly classify its commercial drivers as employees.

(d) The Labor Commissioner shall analyze the information provided pursuant to paragraph (2) of subdivision (c) for the purpose of evaluating the scope of a prior reclassification of an eligible motor carrier's commercial drivers to employees and has discretionary authority to determine whether the scope was sufficient to afford relief to the misclassified commercial drivers.

(e) Before January 1, 2017, the Labor Commissioner, with the cooperation and consent of the department, may negotiate and execute a settlement agreement with an eligible motor carrier pursuant to the program that applied to participate in the program. The Labor Commissioner shall not execute a settlement agreement on or after January 1, 2017.

(f) Prior to the Labor Commissioner executing a settlement agreement, an eligible motor carrier shall file its contribution returns and report unreported wages and taxes for the time period it seeks relief under the settlement agreement.

(g) A settlement agreement executed by the Labor Commissioner and an eligible motor carrier pursuant to the program shall require an eligible motor carrier to do all of the following:

(1) Pay all wages, benefits, and taxes owed, if any, to or in relation to all of its commercial drivers reclassified from independent contractors to employees for the period of time from the first date of misclassification to the date the settlement agreement is executed, but not exceeding the applicable statute of limitations.

(2) Maintain any converted commercial driver positions as employee positions.

(3) Consent that any future commercial drivers hired to perform the same or similar duties as those employees converted pursuant to the settlement agreement shall be presumed to have employee status and that the eligible motor carrier shall have the burden to prove by clear and convincing evidence that they are not employees in any administrative or judicial proceeding in which their employment status is an issue.

(4) Immediately after the execution of the settlement agreement, secure the workers' compensation coverage that is legally required for the commercial drivers who were reclassified as employees, effective on or before the date the settlement agreement is executed.

(5) Provide the Labor Commissioner and the department with proof of workers' compensation insurance coverage in compliance with paragraph (4) within five days of securing the coverage.

(6) Pay the costs authorized by subdivision (h), if required.

(7) Perform any other requirements or provisions the Labor Commissioner and the department deem necessary to carry out the intent of this section, the program, or to enforce the settlement agreement.

(h) A settlement agreement may require an eligible motor carrier to pay the reasonable, actual costs of the Labor Commissioner and the department for their respective review, approval, and compliance monitoring of the settlement agreement. The costs shall be deposited into the Labor Enforcement and Compliance Fund. The portion of the costs attributable to the department shall be transferred to the department upon appropriation by the Legislature.

(i) The settlement agreement may include provisions for an eligible motor carrier to make installment payments of amounts due pursuant to paragraphs (1) and (6) of subdivision (g) in lieu of a full payment. An installment payment agreement shall be

included within the settlement agreement and charge interest on the outstanding amounts due at the rate prescribed in Sections 1113 and 1129 of the Unemployment Insurance Code. Interest on amounts due shall be charged from the day after the date the settlement agreement is executed. The settlement agreement shall contain a provision that if a motor carrier fails, without good cause, to fully comply with terms of the settlement agreement authorizing installment payments, the settlement agreement shall be null and void and the total amount of tax, interest, and penalties for the time period covered by the settlement agreement shall be immediately due and payable.

(j) The Labor Commissioner and the department may share any information necessary to carry out the program. Sharing information pursuant to this subdivision shall not constitute a waiver of any applicable confidentiality requirements and the party receiving the information shall be subject to any existing confidentiality requirements for that information.

(k) (1) Notwithstanding any other law and pursuant to the program, an eligible motor carrier that executed and performed its obligations pursuant to a settlement agreement shall not be liable, and the Labor Commissioner or the department shall not enforce, any civil or statutory penalties, including, but not limited to, remedies available under subdivision (e) of Section 226, that might have become due and payable for the time period covered by the settlement agreement, except for the following penalties:

(A) A penalty charged under Section 1128 of the Unemployment Insurance Code that is final on the date of the settlement agreement is executed, unless the penalty is reversed by the California Unemployment Insurance Appeals Board.

(B) A penalty for an amount an eligible motor carrier admitted was based on fraud or made with the intent to evade the reporting requirements set forth in this division or authorized regulations.

(C) A penalty based on a violation of this division or Division 6 (commencing with Section 13000) of the Unemployment Insurance Code and either of the following:

(i) The eligible motor carrier was on notice of a criminal investigation due to a complaint having been filed or by written notice having been mailed to the eligible motor carrier informing the motor carrier that it is under criminal investigation.

(ii) A criminal court proceeding has already been initiated against the eligible motor carrier.

(2) (A) Notwithstanding any other law and pursuant to the program, an eligible motor carrier that executed and performed its obligations pursuant to a settlement agreement shall not be liable, and the Labor Commissioner or the department shall not enforce, any unpaid penalties, and interest owed on unpaid penalties, on or before the date the settlement agreement was executed, pursuant to Sections 1112.5, 1126, and 1127 of the Unemployment Insurance Code for the tax reporting periods for which the settlement agreement is applicable, that are owed as a result of the nonpayment of tax liabilities due to the misclassification of one or more commercial drivers as independent contractors and the reclassification of these commercial drivers as employees, except that penalties, and interest owed on penalties, established as a result of an assessment issued by the department before the date the settlement agreement was executed shall not be waived pursuant to the program.

(B) For purposes of paragraph (1), state personal income taxes required to be withheld by Section 13020 of the Unemployment Insurance Code and owed by the motor carrier pursuant to Section 13070 of the Unemployment Insurance Code shall not be collected, if the eligible motor carrier issued an information return pursuant to Section 6041A of the Internal Revenue Code reporting payment or if the commercial driver certifies that the state personal tax has been paid or that he or she has reported to the Franchise Tax Board the payment against which the state personal income tax would have been imposed.

(3) A refund or credit for any penalty or interest paid prior to the date an eligible motor carrier applied to participate in the program shall not be granted.

(4) Except for violations described in Section 2119 of the Unemployment Insurance Code, the department shall not bring a criminal action for failing to report tax liabilities against an eligible motor carrier that executed and performed its obligations pursuant to a settlement agreement for the tax reporting periods subject to the settlement agreement.

(l) The statute of limitations on any claim or liability that might have been asserted against a motor carrier based on the motor carrier having misclassified a commercial driver as an independent contractor shall be tolled from the date a motor carrier applies for participation in the program through the date the Labor Commissioner either denies the motor carrier participation in the program or the motor carrier, as an eligible motor carrier, has failed to perform an obligation under the settlement agreement, whichever is later.

(m) The recovery obtained by the Labor Commissioner on behalf of a reclassified commercial driver pursuant to a settlement agreement shall be tendered to the commercial driver on the condition that the commercial driver shall execute a release of all claims the commercial driver may have against the eligible motor carrier based on the eligible motor carrier's failure to classify the commercial driver as an employee. A commercial driver shall not be under any obligation to accept the terms of a settlement agreement. If a commercial driver declines to accept the terms of a settlement agreement, the commercial driver shall not be bound by the settlement agreement, except that the eligible motor carrier shall still reclassify the commercial driver as an employee and that commercial driver shall be precluded from pursuing a claim for civil penalties or statutory penalties covered by the period of time covered by the settlement agreement. If a commercial driver does not accept the terms of a settlement agreement, the motor carrier shall be excused from performing its requirement under the settlement agreement to pay the amount acknowledged in the settlement agreement to be due to that commercial driver.

(n) (1) If the Labor Commissioner determines an eligible motor carrier violated or failed to perform any of its obligations under a settlement agreement, the Labor Commissioner may file a civil action to enforce the settlement agreement.

(2) (A) If the Labor Commissioner files a civil action seeking only recovery of the amounts due to commercial drivers under the settlement agreement, the Labor Commissioner may obtain judicial enforcement by filing a petition for entry of judgment for the liabilities due and remaining pursuant to the settlement agreement.

(B) After filing a petition pursuant to subparagraph (A), the Labor Commissioner may file an application for an order to show cause and serve it on the eligible motor carrier. Within 60 days of the date the Labor Commissioner filed the order to show cause, the court shall hold a hearing and enter a judgment. The judgment shall be in amounts which are due and owing to commercial drivers pursuant to the settlement agreement with credits, if any, for applicable payments the eligible motor carrier made under the settlement agreement. A judgment entered pursuant to this paragraph shall not preclude subsequent action

to recover civil penalties or statutory penalties by the Labor Commissioner, or by an employee pursuant to Sections 2698 to 2699.5, inclusive.

(3) If the court determines in any action filed by the Labor Commissioner that a motor carrier has violated or otherwise failed to perform any of its obligations under a settlement agreement, the court shall award the Labor Commissioner costs and reasonable attorney's fees.

(Amended by Stats. 2016, Ch. 86, Sec. 216. Effective January 1, 2017.)

2751. (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

(b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

(c) As used in this section, "commissions" has the meaning set forth in Section 204.1. For purposes of this section only, "commission" does not include any of the following:

(1) Short-term productivity bonuses such as are paid to retail clerks.

(2) Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.

(3) Bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

(Amended by Stats. 2012, Ch. 826, Sec. 1. Effective January 1, 2013.)

2753. (a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

(b) This section does not apply to the following persons:

(1) A person who provides advice to his or her employer.

(2) An attorney authorized to practice law in California or another United States jurisdiction who provides legal advice in the course of the practice of law.

(Added by Stats. 2011, Ch. 706, Sec. 2. Effective January 1, 2012.)

2754. (a) For the purposes of this section, the following definitions shall apply:

(1) "California-based team" means a team that plays a majority of its home games in California.

(2) "Cheerleader" means an individual who performs acrobatics, dance, or gymnastics exercises on a recurring basis. This term shall not include an individual who is not otherwise affiliated with a California-based professional sports team and is utilized during its exhibitions, events, or games no more than one time in a calendar year.

(3) "Professional sports team" means a team at either a minor or major league level in the sport of baseball, basketball, football, ice hockey, or soccer.

(b) Notwithstanding any other law, for purposes of all of the provisions of state law that govern employment, including this code, the Unemployment Insurance Code, and the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), a cheerleader who is utilized by a California-based professional sports team directly or through a labor contractor during its exhibitions, events, or games, shall be deemed to be an employee.

(c) The professional sports team shall ensure that the cheerleader is classified as an employee.

(Added by Stats. 2015, Ch. 102, Sec. 1. Effective January 1, 2016.)

Article 2. Obligations of Employer

(Article 2 enacted by Stats. 1937, Ch. 90.)

2800. An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care.

(Enacted by Stats. 1937, Ch. 90.)

2800.1. An employer shall in all cases take reasonable and necessary precautions to safeguard musical instruments and equipment, belonging to an employed musician, located on premises under the employer's control. In the event such equipment is damaged or stolen as a result of the employer's failure or refusal to take such reasonable and necessary precautions, the employer shall be liable to the owner for repair or replacement thereof if the employed musician has taken reasonable and necessary precautions to safeguard the musical instruments and equipment.

For the purposes of this section: (a) "employer" includes a purchaser of services and the owner of premises upon which an employed musician is working; and (b) "employee" is any employed musician working on premises which are under an employer's control.

(Added by Stats. 1973, Ch. 497.)

2800.2. (a) Any employer, employee association, or other entity otherwise providing hospital, surgical, or major medical benefits to its employees or members is solely responsible for notification of its employees or members of the conversion coverage made available pursuant to Part 6.1 (commencing with Section 12670) of Division 2 of the Insurance Code or Section 1373.6 of the Health and Safety Code.

(b) Any employer, employee association, or other entity, whether private or public, that provides hospital, medical, or surgical expense coverage that a former employee may continue under Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, or Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as may be later amended (hereafter "COBRA"), shall, in conjunction with the notification required by COBRA that COBRA continuation coverage will cease and conversion coverage is available, and as a part of the notification required by subdivision (a), also notify the former employee, spouse, or former spouse of the availability of the continuation coverage under Section 1373.621 of the Health and Safety Code, and Sections 10116.5 and 11512.03 of the Insurance Code.

(c) On or after July 1, 2006, notification provided to employees, members, former employees, spouses, or former spouses under subdivisions (a) and (b) shall also include the following notification:

"Please examine your options carefully before declining this coverage. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely."

(Amended by Stats. 2005, Ch. 526, Sec. 8. Effective January 1, 2006.)

2800.3. Any employer, other than a self-insurer, employee association or other entity otherwise providing hospital, surgical or major medical benefits to its employees or members shall also make available conversion coverage which complies with the provisions of Part 6.1 (commencing with Section 12670) of Division 2 of the Insurance Code and Section 1373.6 of the Health and Safety Code.

(Added by Stats. 1981, Ch. 1096, Sec. 4. Operative January 1, 1983, by Sec. 5 of Ch. 1096.)

2801. In any action to recover damages for a personal injury sustained within this State by an employee while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employee has been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employee.

It shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any law enacted for the safety of employees contributed to such employee's injury.

It shall not be a defense that:

(a) The employee either expressly or impliedly assumed the risk of the hazard complained of.

(b) The injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

No contract, or regulation, shall exempt the employer from any provisions of this section.

(Enacted by Stats. 1937, Ch. 90.)

2802. (a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

(d) In addition to recovery of penalties under this section in a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against an employer or other person acting on behalf of the employer who violates reimbursement obligations for an amount determined to be due to an employee under this section. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.

(Amended by Stats. 2015, Ch. 783, Sec. 4. Effective January 1, 2016.)

2803. When death, whether instantaneously or otherwise, results from an injury to an employee caused by the want of ordinary or reasonable care of an employer or of any officer, agent, a servant of the employer, the personal representative of such employee shall have a right of action therefor against such employer, and may recover damages in respect thereof, for and on behalf of the surviving spouse, children, dependent parents, and dependent brothers and sisters, in order of precedence as stated, but no more than one action shall be brought for such recovery.

(Amended by Stats. 1976, Ch. 1171.)

2803.4. (a) Any employer providing health benefits under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.) shall not provide an exception for other coverage where the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code. Any employer providing health benefits under the Employee Retirement Income Security Act of 1974 shall not provide an exception for the Medi-Cal or medicaid benefits.

(b) Any employer providing health benefits under the Employee Retirement Income Security Act of 1974 shall not provide that the benefits payable are subject to reduction if the individual insured has entitlement to Medi-Cal or medicaid benefits.

(c) Any employer providing health benefits under the Employee Retirement Income Security Act of 1974 shall not provide an exception for enrollment for benefits because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(d) The State Department of Health Services shall consider health benefits available under the Employee Retirement Income Security Act of 1974 in determining legal liability of any third party for medical expenses incurred by a Medi-Cal or medicaid recipient under Section 14124.90 of the Welfare and Institutions Code and Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(Added by Stats. 1994, Ch. 147, Sec. 16. Effective July 11, 1994.)

2803.5. Any employer who offers health care coverage, including employers and insurers, shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

(Amended by Stats. 1996, Ch. 1062, Sec. 28. Effective January 1, 1997.)

2804. Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.

(Enacted by Stats. 1937, Ch. 90.)

2806. (a) No employer, whether private or public, shall discontinue coverage for medical, surgical, or hospital benefits for employees unless the employer has notified and advised all covered employees in writing of any discontinuation of coverage, inclusive of nonrenewal and cancellation, but not inclusive of employment termination or cases in which substitute coverage has been provided, at least 15 days in advance of such discontinuation.

(b) If coverage is provided by a third party, failure of the employer to give the necessary notice shall not require the third

party to continue the coverage beyond the date it would otherwise terminate.

(c) This section shall not apply to any employee welfare benefit plan that is subject to the Employee Retirement Income Security Act of 1974.

(Amended by Stats. 1992, Ch. 722, Sec. 8. Effective September 15, 1992.)

2807. (a) All employers, whether private or public, shall provide notification to former employees, along with the notification required by federal law pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), of the availability of continued coverage for medical, surgical, or hospital benefits, a standardized written description of the Health Insurance Premium Program established by the State Department of Health Services pursuant to Section 120835 of the Health and Safety Code and Section 14124.91 of the Welfare and Institutions Code. The employer shall utilize the standardized written description prepared by the State Department of Health Services pursuant to subdivision (b).

(b) The State Department of Health Services shall prepare and make available, on request, a standardized written description of the Health Insurance Premium Program, at cost.

(Amended by Stats. 1996, Ch. 1023, Sec. 381. Effective September 29, 1996.)

2808. (a) It is the responsibility of all employers, whether public or private, to provide to all eligible employees an outline of coverage or similar explanation of all benefits provided under employer-sponsored health coverage, including, but not limited to, provider information for health maintenance organizations and preferred provider organizations.

(b) All employers, whether public or private, shall provide to employees, upon termination, notification of all continuation, disability extension, and conversion coverage options under any employer-sponsored coverage for which the employee may remain eligible after employment with that employer terminates.

(Added by Stats. 1993, Ch. 1210, Sec. 12. Effective January 1, 1994.)

2809. (a) Any employer, whether private or public, that offers its employees an employer-managed deferred compensation plan shall provide to each employee, prior to the employee's enrollment in the plan, written notice of the reasonably foreseeable financial risks accompanying participation in the plan, historical information to date as to the performance of the investments or funds available under the plan, and an annual balance sheet, annual audit, or similar document that describes the employer's financial condition as of a date no earlier than the immediately preceding year.

(b) Within 30 days after the end of each quarter of the calendar year, the employer, who directly manages the investments of a deferred compensation plan, shall provide, to each employee enrolled in a deferred compensation plan offered by the employer, a written report summarizing the current financial condition of the employer, summarizing the financial performance during the preceding quarter of each investment or fund available under the plan, and describing the actual performance of the employee's funds that are invested in each investment or fund in the plan.

(c) The obligations described in subdivisions (a) and (b) may be performed by a plan manager designated by the employer, who may contract with an investment manager for that purpose.

(d) If an employee is enrolled in a deferred compensation plan that is self-directed through a financial institution, the requirements set forth in this section shall be deemed to have been met.

(Added by Stats. 1996, Ch. 1160, Sec. 1. Effective January 1, 1997.)

2810. (a) A person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

(b) There is a rebuttable presumption affecting the burden of proof that there has been no violation of subdivision (a) where the contract or agreement with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor meets all of the requirements in subdivision (d).

(c) Subdivision (a) does not apply to a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or to a person who enters into a contract or agreement for labor or services to be performed on his or her home residences, provided that a family member resides in the residence or residences for which the labor or services are to be performed for at least a part of the year.

(d) To meet the requirements of subdivision (b), a contract or agreement with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor for labor or services shall be in writing, in a single document, and contain all of the following provisions, in addition to any other provisions that may be required by regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, security guard, or warehouse contractor through whom the labor or services are to be provided.

(2) A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.

(3) The employer identification number for state tax purposes of the construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(4) The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier of the construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(5) The vehicle identification number of any vehicle that is owned by the construction, farm labor, garment, janitorial, security guard, or warehouse contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier.

(6) The address of any real property to be used to house workers in connection with the contract or agreement.

(7) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid.

(8) The amount of the commission or other payment made to the construction, farm labor, garment, janitorial, security guard, or warehouse contractor for services under the contract or agreement.

(9) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

(10) The signatures of all parties, and the date the contract or agreement was signed.

(e) (1) To qualify for the rebuttable presumption set forth in subdivision (b), a material change to the terms and conditions of a contract or agreement between a person or entity and a construction, farm labor, garment, janitorial, security guard, or warehouse contractor must be in writing, in a single document, and contain all of the provisions listed in subdivision (d) that are affected by the change.

(2) If a provision required to be contained in a contract or agreement pursuant to paragraph (7) or (9) of subdivision (d) is unknown at the time the contract or agreement is executed, the best estimate available at that time is sufficient to satisfy the requirements of subdivision (d). If an estimate is used in place of actual figures in accordance with this paragraph, the parties to the contract or agreement have a continuing duty to ascertain the information required pursuant to paragraph (7) or (9) of subdivision (d) and to reduce that information to writing in accordance with the requirements of paragraph (1) once that information becomes known.

(f) A person or entity who enters into a contract or agreement referred to in subdivisions (d) or (e) shall keep a copy of the written contract or agreement for a period of not less than four years following the termination of the contract or agreement. Upon the request of the Labor Commissioner, any person or entity who enters into the contract or agreement shall provide to the Labor Commissioner a copy of the provisions of the contract or agreement, and any other documentation, related to paragraphs (1) to (10), inclusive, of subdivision (d). Documents obtained pursuant to this section are exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(g) (1) An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of his or her actual damages or two hundred fifty dollars ($250) per employee per violation for an initial violation and one thousand dollars ($1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section shall not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, security guard, or warehouse contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(i) (1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

(j) For the purposes of this section, "warehouse" means a facility the primary operation of which is the storage or distribution of general merchandise, refrigerated goods, or other products.

(Amended by Stats. 2012, Ch. 813, Sec. 1. Effective January 1, 2013.)

2810.3. (a) As used in this section:

(1) (A) "Client employer" means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.

(B) "Client employer" does not include any of the following:

(i) A business entity with a workforce of fewer than 25 workers, including those hired directly by the client employer and those obtained from, or provided by, any labor contractor.

(ii) A business entity with five or fewer workers supplied by a labor contractor or labor contractors to the client employer at any given time.

(iii) The state or any political subdivision of the state, including any city, county, city and county, or special district.

(2) "Labor" has the same meaning provided by Section 200.

(3) "Labor contractor" means an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business. "Labor contractor" does not include any of the following:

(A) A bona fide nonprofit, community-based organization that provides services to workers.

(B) A bona fide labor organization or apprenticeship program or hiring hall operated pursuant to a collective bargaining agreement.

(C) A motion picture payroll services company as defined in subparagraph (A) of paragraph (4) of subdivision (f) of Section 679 of the Unemployment Insurance Code.

(D) A third party who is a party to an employee leasing arrangement, as defined by Rule 4 of Section V of the California Workers' Compensation Experience Rating Plan-1995 (Section 2353.1 of Title 10 of the California Code of Regulations), as it read on January 1, 2014, except those arrangements described in subrule d of Rule 4 of Section V, if the employee leasing arrangement contractually obligates the client employer to assume all civil legal responsibility and civil liability under this act.

(4) "Wages" has the same meaning provided by Section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

(5) "Worker" does not include an employee who is exempt from the payment of an overtime rate of compensation for executive, administrative, and professional employees pursuant to wage orders by the Industrial Welfare Commission described in Section 515.

(6) "Usual course of business" means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.

(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

(1) The payment of wages.

(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

(c) A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

(e) Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action.

(f) The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

(g) This section does not prohibit a client employer from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a labor contractor for liability created by acts of a labor contractor.

(h) This section does not prohibit a labor contractor from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a client employer for liability created by acts of a client employer.

(i) Upon request by a state enforcement agency or department, a client employer or a labor contractor shall provide to the agency or department any information within its possession, custody, or control required to verify compliance with applicable state laws. Upon request, these records shall be made available promptly for inspection, and the state agency or department shall be permitted to copy them. This subdivision does not require the disclosure of information that is not otherwise required to be disclosed by employers upon request by a state enforcement agency or department.

(j) The Labor Commissioner may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under his or her jurisdiction.

(k) The Division of Occupational Safety and Health may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (c) and (i) that are under its jurisdiction.

(l) The Employment Development Department may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under its jurisdiction.

(m) A waiver of this section is contrary to public policy, and is void and unenforceable.

(n) This section shall not be interpreted to impose individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home.

(o) This section shall not be interpreted to impose liability on a client employer for the use of an independent contractor other than a labor contractor or to change the definition of independent contractor.

(p) This section shall not be interpreted to impose liability on the following:

(1) A client employer that is not a motor carrier of property based solely on the employer's use of a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight.

(2) A client employer that is a motor carrier of property subcontracting with, or otherwise engaging, another motor carrier of property to provide transportation services using its own employees and commercial motor vehicles, as defined in Section 34601 of the Vehicle Code.

(3) A client employer that is not a household goods carrier based solely on the employer's use of a third-party household goods carrier permitted by the Public Utilities Commission pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code to move household goods.

(4) A client employer that is a household goods carrier permitted by the Public Utilities Commission pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code subcontracting with, or otherwise engaging, another permitted household goods carrier to provide transportation of household goods using its own employees and motor vehicles, as defined in Section 5108 of the Public Utilities Code.

(5) A client employer that is a cable operator as defined by Section 5830 of the Public Utilities Code, a direct-to-home satellite service provider, or a telephone corporation as defined by Section 234 of the Public Utilities Code, based upon its contracting with a company to build, install, maintain, or perform repair work utilizing the employees and vehicles of the contractor if the name of the contractor is visible on employee uniforms and vehicles.

(6) A motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code when it contracts with third parties to provide motor club services utilizing the employees and vehicles of the third-party contractor if the name of the contractor is visible on the contractor's vehicles.

(Amended by Stats. 2015, Ch. 792, Sec. 3. Effective January 1, 2016.)

2810.5. (a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare a template that complies with the requirements of paragraph (1). The template shall be made available to employers in such manner as determined by the Labor Commissioner.

(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) must also include the name, the physical address of the main office, the

mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

(1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.

(2) Notice of all changes is provided in another writing required by law within seven days of the changes.

(c) For purposes of this section, "employee" does not include any of the following:

(1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.

(2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

(3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(Amended by Stats. 2014, Ch. 317, Sec. 4. Effective January 1, 2015.)

Article 2.5. Electronic Employment Verification Systems

(Article 2.5 added by Stats. 2011, Ch. 691, Sec. 2.)

2811. This article shall be known and may be cited as the Employment Acceleration Act of 2011.

(Added by Stats. 2011, Ch. 691, Sec. 2. Effective January 1, 2012.)

2812. Except as required by federal law, or as a condition of receiving federal funds, neither the state nor a city, county, city and county, or special district shall require an employer to use an electronic employment verification system, including under the following circumstances:

(a) As a condition of receiving a government contract.

(b) As a condition of applying for or maintaining a business license.

(c) As a penalty for violating licensing or other similar laws.

(Added by Stats. 2011, Ch. 691, Sec. 2. Effective January 1, 2012.)

2813. For purposes of this article, the following terms have the following meanings:

(a) "Electronic employment verification system" means an employment verification system that allows employers to electronically verify workers' employment authorization with the federal government. This includes the Basic Pilot Program, enacted by Section 404 of Public Law 104-208 and renamed in 2007 as the E-Verify Program, and other pilot programs for electronic employment eligibility confirmation. The term "electronic employment verification system" does not include the I-9 Employment Eligibility Verification form or any other employment eligibility systems that are required by federal law.

(b) "Employer" means an employer other than the state, or a city, county, city and county, or special district.

(Added by Stats. 2011, Ch. 691, Sec. 2. Effective January 1, 2012.)

2814. (a) (1) Except as required by federal law or as a condition of receiving federal funds, it shall be unlawful for an employer, or any other person or entity to use the federal electronic employment verification system known as E-Verify to check the employment authorization status of an existing employee or an applicant who has not been offered employment at a time or in a manner not required under subsection (b) of Section 1324a of Title 8 of the United States Code or not authorized under any federal agency memorandum of understanding governing the use of a federal electronic employment verification system.

(2) Nothing in this section shall prohibit an employer from utilizing the federal E-Verify system, in accordance with federal law, to check the employment authorization status of a person who has been offered employment.

(b) Upon using the federal E-Verify system to check the employment authorization status of a person, if the employer receives a tentative nonconfirmation issued by the Social Security Administration or the United States Department of Homeland Security, which indicates the information entered in E-Verify did not match federal records, the employer shall comply with the required employee notification procedures under any memorandum of understanding governing the use of the federal E-Verify system. The employer shall furnish to the employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee's E-Verify case or any tentative nonconfirmation notice. The notification shall be furnished as soon as practicable.

(c) In addition to other remedies available, an employer who violates this section is liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation of this section. Each unlawful use of the E-Verify system on an employee or applicant constitutes a separate violation.

(d) This section is intended to prevent discrimination in employment rather than to sanction the potential hiring and employment of persons who are not authorized for employment under federal law.

(Added by Stats. 2015, Ch. 696, Sec. 1. Effective January 1, 2016.)

Article 3. Obligations of Employee

(Article 3 enacted by Stats. 1937, Ch. 90.)

2850. One who, without consideration, undertakes to do a service for another, is not bound to perform the same but if he actually enters upon its performance, he shall use at least slight care and diligence therein.

(Enacted by Stats. 1937, Ch. 90.)

2851. One who, by his own special request, induces another to intrust him with the performance of a service, shall perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(Enacted by Stats. 1937, Ch. 90.)

2852. A gratuitous employee, who accepts a written power of attorney, shall act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

(Enacted by Stats. 1937, Ch. 90.)

2853. One who is employed at his own request to do that which is more for his own advantage than for that of his employer, shall use great care and diligence therein to protect the interest of the employer.

(Enacted by Stats. 1937, Ch. 90.)

2854. One who, for a good consideration, agrees to serve another, shall perform the service, and shall use ordinary care and diligence therein, so long as he is thus employed.

(Enacted by Stats. 1937, Ch. 90.)

2855. (a) Except as otherwise provided in subdivision (b), a contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 (commencing with Section 3070), may not be enforced against the employee beyond seven years from the commencement of service under it. Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which cannot be reasonably or adequately compensated in damages in an action at law, may nevertheless be enforced against the person contracting to render the service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues to serve under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

(b) Notwithstanding subdivision (a):

(1) Any employee who is a party to a contract to render personal service in the production of phonorecords in which sounds are first fixed, as defined in Section 101 of Title 17 of the United States Code, may not invoke the provisions of subdivision (a) without first giving written notice to the employer in accordance with Section 1020 of the Code of Civil Procedure, specifying that the employee from and after a future date certain specified in the notice will no longer render service under the contract by reason of subdivision (a).

(2) Any party to a contract described in paragraph (1) shall have the right to recover damages for a breach of the contract occurring during its term in an action commenced during or after its term, but within the applicable period prescribed by law.

(3) If a party to a contract described in paragraph (1) is, or could contractually be, required to render personal service in the production of a specified quantity of the phonorecords and fails to render all of the required service prior to the date specified in the notice provided in paragraph (1), the party damaged by the failure shall have the right to recover damages for each phonorecord as to which that party has failed to render service in an action that, notwithstanding paragraph (2), shall be commenced within 45 days after the date specified in the notice.

(Amended by Stats. 2006, Ch. 538, Sec. 487. Effective January 1, 2007.)

2856. An employee shall substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.

(Enacted by Stats. 1937, Ch. 90.)

2857. An employee shall perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable or manifestly injurious to his employer to do so.

(Enacted by Stats. 1937, Ch. 90.)

2858. An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

(Enacted by Stats. 1937, Ch. 90.)

2859. An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

(Enacted by Stats. 1937, Ch. 90.)

2860. Everything which an employee acquires by virtue of his employment, except the compensation which is due to him from his employer, belongs to the employer, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

(Enacted by Stats. 1937, Ch. 90.)

2861. An employee shall, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as is reasonable, and shall, without demand, give prompt notice to his employer of everything which he receives for the account of the employer.

(Enacted by Stats. 1937, Ch. 90.)

2862. An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to the employer until demanded, and is not at liberty to send it to the employer from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

(Enacted by Stats. 1937, Ch. 90.)

2863. An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, shall always give the preference to the business of the employer.

(Enacted by Stats. 1937, Ch. 90.)

2864. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

(Enacted by Stats. 1937, Ch. 90.)

2865. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the employer. The employer is liable to the employee if the service is not gratuitous, for the value of the services only as are properly rendered.

(Enacted by Stats. 1937, Ch. 90.)

2866. Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor shall act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

(Enacted by Stats. 1937, Ch. 90.)

Article 3.5. Inventions Made by an Employee

(Article 3.5 added by Stats. 1979, Ch. 1001.)

2870. (a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

(Amended by Stats. 1991, Ch. 647, Sec. 5.)

2871. No employer shall require a provision made void and unenforceable by Section 2870 as a condition of employment or

continued employment. Nothing in this article shall be construed to forbid or restrict the right of an employer to provide in contracts of employment for disclosure, provided that any such disclosures be received in confidence, of all of the employee's inventions made solely or jointly with others during the term of his or her employment, a review process by the employer to determine such issues as may arise, and for full title to certain patents and inventions to be in the United States, as required by contracts between the employer and the United States or any of its agencies.

(Added by Stats. 1979, Ch. 1001.)

2872. If an employment agreement entered into after January 1, 1980, contains a provision requiring the employee to assign or offer to assign any of his or her rights in any invention to his or her employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention which qualifies fully under the provisions of Section 2870. In any suit or action arising thereunder, the burden of proof shall be on the employee claiming the benefits of its provisions.

(Added by Stats. 1979, Ch. 1001.)

Article 4. Termination of Employment

(Article 4 enacted by Stats. 1937, Ch. 90.)

2920. Every employment is terminated by any of the following:

(a) Expiration of its appointed term.

(b) Extinction of its subject.

(c) Death of the employee.

(d) The employee's legal incapacity to act as such.

(Enacted by Stats. 1937, Ch. 90.)

2921. Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to the employee of either of the following:

(a) The death of the employer.

(b) The legal incapacity of the employer to contract.

(Enacted by Stats. 1937, Ch. 90.)

2922. An employment, having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month.

(Amended by Stats. 1971, Ch. 1607.)

2923. An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, shall continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor shall compensate the employee for such service according to the terms of the contract of employment.

(Enacted by Stats. 1937, Ch. 90.)

2924. An employment for a specified term may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

(Amended by Stats. 1971, Ch. 1607.)

2925. An employment for a specified term may be terminated by the employee at any time in case of any wilful or permanent breach of the obligations of his employer to him as an employee.

(Enacted by Stats. 1937, Ch. 90.)

2926. An employee who is not employed for a specified term and who is dismissed by his employer is entitled to compensation for services rendered up to the time of such dismissal.

(Enacted by Stats. 1937, Ch. 90.)

2927. An employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of such quitting.

(Enacted by Stats. 1937, Ch. 90.)

2928. No deduction from the wages of an employee on account of his coming late to work shall be made in excess of the proportionate wage which would have been earned during the time actually lost, but for a loss of time less than thirty minutes, a half hour's wage may be deducted.

(Enacted by Stats. 1937, Ch. 90.)

2929. (a) As used in this section:

(1) "Garnishment" means any judicial procedure through which the wages of an employee are required to be withheld for the payment of any debt.

(2) "Wages" has the same meaning as that term has under Section 200.

(b) No employer may discharge any employee by reason of the fact that the garnishment of his wages has been threatened. No employer may discharge any employee by reason of the fact that his wages have been subjected to garnishment for the payment of one judgment. A provision of a contract of employment that provides an employee with less protection than is provided by this subdivision is against public policy and void.

(c) Unless the employee has greater rights under the contract of employment, the wages of an employee who is discharged in violation of this section shall continue until reinstatement notwithstanding such discharge, but such wages shall not continue for more than 30 days and shall not exceed the amount of wages earned during the 30 calendar days immediately preceding the date of the levy of execution upon the employee's wages which resulted in his discharge. The employee shall give notice to his employer of his intention to make a wage claim under this subdivision within 30 days after being discharged; and, if he desires to have the Labor Commissioner take an assignment of his wage claim, the employee shall file a wage claim with the Labor Commissioner within 60 days after being discharged. The Labor Commissioner may, in his discretion, take assignment of wage claims under this subdivision as provided for in Section 96. A discharged employee shall not be permitted to recover wages under this subdivision if a criminal prosecution based on the same discharge has been commenced for violation of Section 304 of the Consumer Credit Protection Act of 1968 (15 U.S.C. Sec. 1674).

(d) Nothing in this section affects any other rights the employee may have against his employer.

(e) This section is intended to aid in the enforcement of the prohibition against discharge for garnishment of earnings provided in the Consumer Credit Protection Act of 1968 (15 U.S.C. Secs. 1671–1677) and shall be interpreted and applied in a manner which is consistent with the corresponding provisions of such act.

(Added by Stats. 1971, Ch. 1607.)

Article 5. Investigations of Employees

(Article 5 added by Stats. 1978, Ch. 1252.)

2930. (a) Any employer who disciplines or discharges an employee on the basis of a shopping investigator's report of

the employee's conduct, performance, or honesty performed by a person licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code shall provide the employee with a copy of the investigation report prior to discharging or disciplining the employee. Where an interview occurs which might result in the termination of an employee for dishonesty, the employee shall be handed a copy of the latest investigation report on which the interview was based during the course of the interview prior to its conclusion. This section shall not be applicable if the licensee conducting the investigation is employed exclusively and regularly by one employer in connection with the affairs of only that employer and where there exists an employer-employee relationship and the entire investigation is conducted solely for such employer by such licensee.

(b) For purposes of this section, a "shopping investigator" is a person who: shops in commercial, retail, and service establishments to test integrity of sales, warehouse, stockroom, and service personnel, and evaluates sales techniques and services rendered customers; reviews an establishment's policies and standards to ascertain employee performance requirements; buys merchandise, orders food, or utilizes services to evaluate sales technique and courtesy of employees, carries merchandise to check stand or sales counter and observes employees during sales transaction to detect irregularities in listing or calling prices, itemizing merchandise, or handling cash; or delivers purchases to an agency conducting shopping investigation service; and, following any one or more of the above activities, writes a report of investigations for each establishment visited.

(Amended by Stats. 1980, Ch. 370.)

Chapter 4. Apprenticeship

(Heading of Chapter 4 amended by Stats. 1968, Ch. 109.)

3070. There is in the Division of Apprenticeship Standards the California Apprenticeship Council, which shall be appointed by the Governor, composed of six representatives each from employers or employer organizations and employee organizations, that sponsor apprenticeship programs under this chapter, respectively, geographically selected, and of two representatives of the general public. The Director of Industrial Relations, or his or her permanent and best qualified designee, and the Superintendent of Public Instruction, or his or her permanent and best qualified designee, and the Chancellor of the California Community Colleges, or his or her permanent and best qualified designee, shall also be members of the California Apprenticeship Council. The chairperson shall be elected by vote of the California Apprenticeship Council. Beginning with appointments in 1985, three representatives each of employers and employees, and one public representative shall serve until January 15, 1989. In 1987, three representatives each of the employers and employees, and one public representative shall serve until January 15, 1991. Any member whose term expires on January 15, 1986, shall continue to serve until January 15, 1987. Thereafter each member shall serve for a term of four years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor shall be appointed for the remainder of that term. Each member of the council shall receive the sum of one hundred dollars ($100) for each day of actual attendance at meetings of the council, for each day of actual attendance at hearings by the council or a committee thereof pursuant to Section 3082, and for each day of actual attendance at meetings of other committees established by the council and approved by the Director of Industrial Relations, together with his or her actual and necessary traveling expenses incurred in connection therewith.

(Amended by Stats. 1999, Ch. 903, Sec. 4. Effective January 1, 2000.)

3071. The California Apprenticeship Council shall meet at the call of the Director of Industrial Relations and shall aid him or her in formulating policies for the effective administration of this chapter.

Thereafter, the California Apprenticeship Council shall meet quarterly at a designated date and special meetings may be held at the call of the chairman. The California Apprenticeship Council shall issue rules and regulations which establish standards for minimum wages, maximum hours, and working conditions for apprentice agreements, hereinafter in this chapter referred to as apprenticeship standards, which in no case shall be lower than those prescribed by this chapter; and shall issue rules and regulations governing equal opportunities in apprenticeship, affirmative action programs which include women and minorities in apprenticeship, and other on-the-job training, and criteria for selection procedures with a view particularly toward eliminating criteria not relevant to qualification for training employment or more stringent than is reasonably necessary.

(Amended by Stats. 1991, Ch. 269, Sec. 1.)

3072. The Director of Industrial Relations is ex officio the Administrator of Apprenticeship and is authorized to appoint assistants as necessary to effectuate the purposes of this chapter.

(Amended by Stats. 2012, Ch. 46, Sec. 100. Effective June 27, 2012.)

3073. The Chief of the Division of Apprenticeship Standards, or his or her duly authorized representative, shall administer the provisions of this chapter; act as secretary of the California Apprenticeship Council; shall foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment; shall ensure that selection procedures are impartially administered to all applicants for apprenticeship; shall gather and promptly disseminate information through apprenticeship and training information centers; shall maintain on public file in all high schools and field offices of the Employment Development Department the name and location of the local area apprenticeship committees, the filing date, and minimum requirements for application of all registered apprenticeship programs; shall cooperate in the development of apprenticeship programs and may advise with them on problems affecting apprenticeship standards; shall audit all selection and disciplinary proceedings of apprentices or prospective apprentices; may enter joint agreements with the Employment Development Department outreach education and employment programs, and educational institutions on the operation of apprenticeship information centers, including positive efforts to achieve information on equal opportunity and affirmative action programs for women and minorities; and shall supervise and recommend apprenticeship agreements as to these standards and perform such other duties associated therewith as the California Apprenticeship Council may recommend. The chief shall coordinate the exchange, by the California Apprenticeship Council, the apprenticeship program sponsors, the Fair Employment and Housing Council, community organizations, and other interested persons, of information on available minorities and women who may serve as apprentices.

(Amended by Stats. 2012, Ch. 46, Sec. 101. Effective June 27, 2012. Operative January 1, 2013, by Sec. 140 of Ch. 46.)

3073.1. (a) The division shall audit apprenticeship programs to ensure that the program audited is complying

with its standards, that all on-the-job training is supervised by journeymen, that all related and supplemental instruction required by the apprenticeship standards is being provided, that all work processes in the apprenticeship standards are being covered, and that graduates have completed the apprenticeship program's requirements. The division shall examine each apprenticeship program to determine whether apprentices are graduating from the program on schedule or dropping out and to determine whether graduates of the program have obtained employment as journeymen. During the audit, the division shall attempt to contact a statistically valid sample of apprentices who have dropped out of the program prior to completion to determine the apprentices' reasons for leaving the program. Every apprenticeship program sponsor shall have a duty to cooperate with the division in conducting an audit.

(b) Audit reports shall be presented to the California Apprenticeship Council and shall be made public, except that the division shall not make public information that would infringe on the privacy of individual apprentices. The division shall recommend remedial action to correct deficiencies recognized in the audit report, and the failure to follow division recommendations or to correct deficiencies within a reasonable period of time shall be grounds for withdrawing state approval of a program. Nothing shall prevent the division from conducting more frequent or random audits of apprenticeship programs where deficiencies have been identified.

(c) The division shall give priority in conducting audits to programs that have been identified as having deficiencies. The division may conduct simplified audits for programs with fewer than five registered apprentices.

(d) For new and newly expanded building and construction trades apprenticeship programs, the division shall audit each program one year after approval of the creation or expansion of the program.

(e) If the division finds evidence that information provided to it by a building and construction trades apprenticeship program has been purposefully misstated, the division shall immediately investigate and determine whether an audit of the program is necessary. The division shall report its investigatory findings to the California Apprenticeship Council and make them available to the public, except that the division shall not make public information that would infringe upon the privacy of individual apprentices.

(f) If the division determines that a building and construction trades apprenticeship program has been the subject of two or more meritorious complaints that concern the recruitment, training, or education of apprentices within a five-year period, the division shall schedule the program for an audit within three months of the determination.

(g) If the division determines that a building and construction trades apprenticeship program that has had at least two graduating classes has an annual apprentice completion rate below 50 percent of the average completion rate for the applicable trade, the division shall schedule the program for an audit within three months of the determination.

(Amended by Stats. 2011, Ch. 696, Sec. 1. Effective January 1, 2012.)

3073.3. It is the intent of the Legislature that the Department of Industrial Relations will encourage greater participation for women and ethnic minorities in apprenticeship programs.

(Added by Stats. 2003, Ch. 842, Sec. 2. Effective January 1, 2004.)

3073.5. The Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council shall annually report through the Director of Industrial Relations to the Legislature and the public on the activities of the division and the council. The report shall contain information including, but not limited to, analyses of the following:

(a) The number of individuals, including numbers of women and minorities, registered in apprenticeship programs in this state for the current year and in each of the previous five years.

(b) The number and percentage of apprentices, including numbers and percentages of minorities and women, registered in each apprenticeship program having five or more apprentices, and the percentage of those apprentices who have completed their programs successfully in the current year and in each of the previous five years.

(c) Remedial actions taken by the division to assist those apprenticeship programs having difficulty in achieving affirmative action goals or having very low completion rates.

(d) The number of disputed issues with respect to individual apprenticeship agreements submitted to the Administrator of Apprenticeship for determination and the number of those issues resolved by the council on appeal.

(e) The number of apprenticeship program applications received by the division, the number approved, the number denied and the reason for those denials, the number being reviewed, and deficiencies, if any, with respect to those program applications being reviewed.

(f) The number of apprenticeship programs, approved by the Division of Apprenticeship Standards, that are disapproved by the California Apprenticeship Council, and the reasons for those disapprovals.

(Amended by Stats. 1991, Ch. 806, Sec. 1.)

3074. The preparation of trade analyses and development of curriculum for instruction, and the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for this instruction shall be the responsibility of, and shall be provided by, state and local boards responsible for vocational education upon agreement with the program sponsor. This responsibility shall not preclude the establishment of off-campus related and supplemental instruction when approved, developed, and operated in cooperation with state and local school boards responsible for vocational education, and when the instruction meets all other requirements of this chapter. It is the intent of this chapter that the instruction shall be made available to apprentices through classroom instruction, correspondence courses, self-study or other means of instruction approved by state and local public education agencies authorized to provide vocational education.

Pursuant to this chapter all excess costs incurred by local public education agencies exceeding state apportionments and local revenue earned by the attendance of apprentices shall be payable by the program sponsor, upon joint agreement between the sponsor and the local education agency. The State Board of Education and the Board of Governors of the California Community Colleges, and the Division of Apprenticeship Standards shall jointly issue regulations regarding calculation and payment provisions of excess costs to be borne by the program sponsors. All funds accrued by local education agencies from attendance in apprenticeship classes authorized by this section shall be expended or allocated for all such classes offered by the local education agency before excess costs may be claimed.

The Department of Education and the Board of Governors of the California Community Colleges may provide related and supplemental instruction to isolated apprentices as a direct instructional service, on a contractual basis with local school districts, by correspondence, or by a combination of these means. For the purpose of this section, an isolated apprentice is an apprentice registered with the Division of Apprenticeship Standards in the Department of Industrial Relations who cannot be enrolled in a class of related and supplementary instruction for apprentices because of the small number of apprentices available for an appropriate class or because there is no existing apprenticeship program within a reasonable travel distance.

Interested parties may file a complaint in accordance with Section 201 of Title 8 of the Administrative Code, when a community college or secondary education district is unable to reach agreement with program sponsors in providing related and supplemental instruction. In the process of securing an amicable adjustment, the administrator, or his or her representative, shall meet with the parties involved, including, but not limited to, the chancellor, or his or her representative, or the Superintendent of Public Instruction, or his or her representative.

Community colleges, and other public school districts, shall refuse to provide related and supplemental instruction to an apprenticeship program when it is determined by the Administrator of Apprenticeship that the program sponsor has been found to be in noncompliance with the State of California Plan for Equal Opportunity in Apprenticeship.

(Amended by Stats. 1984, Ch. 330, Sec. 2.)

3074.1. In compliance with the affirmative action requirements of California's plan for equal opportunity in apprenticeship, school districts maintaining high schools, community colleges districts, and apprenticeship program sponsors, shall provide students with information as to the availability of apprenticeship programs.

(Added by Stats. 1976, Ch. 1175.)

3074.3. In providing related and supplemental instruction pursuant to Section 3074, and notwithstanding any provisions of the Education Code, the Superintendent of Public Instruction and the Chancellor of the California Community Colleges shall recognize registration in an apprenticeship program approved by the Division of Apprenticeship Standards in the Department of Industrial Relations as an acceptable prerequisite to enrollment into such related and supplemental classes.

(Amended by Stats. 1984, Ch. 285, Sec. 1.)

3074.7. Notwithstanding any other provision of law, the governing board of a school district which offers classroom instruction in postgraduate and upgrading courses pursuant to subdivision (d) of Section 3093 of this code may impose a fee upon individuals receiving instruction in such postgraduate and upgrading courses. Such fee shall be not more than the amount necessary, as determined by the governing board, to cover the total cost of all such classroom instruction given the individuals.

(Added by Stats. 1968, Ch. 961.)

3075. (a) An apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer. Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing. Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

(b) For purposes of this section, the apprentice training needs in the building and construction trades shall be deemed to justify the approval of a new apprenticeship program only if any of the following conditions are met:

(1) There is no existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area.

(2) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers at a public works site who have requested apprentices and are willing to abide by the applicable apprenticeship standards, as shown by a sustained pattern of unfilled requests.

(3) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the California Apprenticeship Council as deficient in meeting their obligations under this chapter.

(c) For purposes of this section, an existing apprenticeship program serves the "same craft or trade" as a proposed apprenticeship program when there would be substantial overlap in the work processes covered by the programs or when graduates of the existing program would be qualified to perform a substantial portion of the work that would be performed by graduates of the new program.

(Amended by Stats. 2015, Ch. 126, Sec. 1. Effective January 1, 2016.)

3075.1. It is the public policy of this state to encourage the utilization of apprenticeship as a form of on-the-job training, when such training is cost-effective in developing skills needed to perform public services. State and local public agencies shall make a diligent effort to establish apprenticeship programs for apprenticeable occupations in their respective work forces. In furtherance of this policy, public agencies shall take into consideration (a) the extent to which a continuous supply of trained personnel is readily available to public agencies to meet their skill requirements in the various occupations which are determined to be apprenticeable, and (b) the application of established programs in the private sector, where appropriate. Public sector apprenticeship programs should be fully compatible with affirmative action goals for the participation of minorities and women in apprenticeship programs.

(Added by Stats. 1976, Ch. 1179.)

3075.5. (a) This section applies when a building and construction trades industry program applies to the Chief of the Division of Apprenticeship Standards for approval of a new apprenticeship program or for the expansion of an existing apprenticeship program into a new occupation or geographic area. The requirements of this section are in addition to other requirements that may be imposed by statute or regulation.

(b) (1) An applicant for a new or expanded apprenticeship program under subdivision (a) shall submit to the chief a written plan that sets out the number of new apprentices the applicant seeks to enroll during the next five years in the new or expanded program, new occupation, or new geographic area. The plan must include the applicant's budget for training the new apprentices and a detailed explanation of how the applicant intends to provide sufficient funding to meet that budget.

(2) The applicant shall submit to the chief a written plan providing a reasonable timetable to obtain sufficient commitments from employers to employ the new apprentices so as to ensure, to

the extent feasible, consistent with the rates of employment for existing programs in good standing in the applicable trade, that the new apprentices will be employed continuously throughout the entire term of apprenticeship.

(3) The applicant shall submit to the chief verifiable evidence that the applicant has obtained, or will obtain, suitable and adequate facilities to train the new apprentices. The chief, or his or her representative, shall personally inspect the facilities within six months after the final approval of the program.

(4) The applicant shall submit to the chief a plan for the recruitment and selection of the new apprentices. The plan shall include advertising of the new apprenticeship opportunities within the geographic area and outreach to organizations that promote apprenticeship opportunities to women and underrepresented minorities.

(c) The chief shall not approve an application that fails to meet any of the requirements of this section. If the chief does not approve an application because of its failure to comply with this section, the chief shall within 90 days provide the applicant with a detailed explanation of the deficiencies in the application and recommendations for addressing those deficiencies to obtain program approval. The applicant may submit a new or amended application to the chief within 90 days of receipt of the chief's recommendations. The chief shall provide a detailed response to a new or amended application within 90 days of its receipt.

(Added by Stats. 2011, Ch. 696, Sec. 2. Effective January 1, 2012.)

3075.6. Each building and construction trades apprenticeship program shall provide to each apprentice, on at least a semiannual basis, a statement showing the number of hours of on-the-job training and related and supplemental instruction that the apprentice has acquired toward graduation, the total number of hours of on-the-job training and related and supplemental instruction that are necessary for graduation, and the apprentice's expected graduation date.

(Added by Stats. 2011, Ch. 696, Sec. 3. Effective January 1, 2012.)

3075.7. Every building and construction trades industry apprenticeship program shall submit apprentice registration, change of address, graduation, and termination data to the Division of Apprenticeship Standards on a monthly basis in an electronic format acceptable to the division.

(Added by Stats. 2011, Ch. 696, Sec. 4. Effective January 1, 2012.)

3076. The function of a joint apprenticeship committee, when specific written authority is delegated by the parent organizations represented, shall be to establish work processes, wage rates, working conditions for apprentices, the number of apprentices which shall be employed in the trade under apprentice agreements, and aid in the adjustment of apprenticeship disputes in accordance with standards for apprenticeship set up by the California Apprenticeship Council. Disciplinary proceedings resulting from disputes shall be duly noticed to the involved individuals.

(Amended by Stats. 1985, Ch. 272, Sec. 3.)

3076.3. Program sponsors shall establish selection procedures which specify minimum requirements for formal education or equivalency, physical examination, if any, subject matter of written tests and oral interviews, and any other criteria pertinent to the selection process; shall specify the relative weights of all factors which determine selection to an apprenticeship program; shall submit in writing to the chief an official statement of each selection procedure including the filing date and location of the program sponsor; shall make a copy of the selection procedures available to each applicant; shall provide in writing to each applicant not selected an official explanation setting forth the reason or reasons for the nonselection, copies of which shall be retained as a public record in the files of the program sponsor for a period of five years; and shall implement affirmative action programs for minorities and women in accordance with the rules, regulations, and guidelines of the California Apprenticeship Council.

(Added by Stats. 1984, Ch. 330, Sec. 4.5.)

3076.5. A program sponsor may provide in its selection procedures for an additional 10 points credit in the selection of veteran applicants for apprenticeship.

"Veteran," as used in this section, means a veteran who has served in the armed forces of this country for at least 181 consecutive days since January 31, 1955, and who has been discharged or released under conditions other than dishonorable, but does not include any person who served only in auxiliary or reserve components of the armed forces whose services therein did not exempt him or her from the operation of the Selective Training and Service Act of 1940 (54 Stat. 885).

(Amended by Stats. 1984, Ch. 330, Sec. 5.)

3077. The term "apprentice" as used in this chapter, means a person at least 16 years of age who has entered into a written agreement, in this chapter called an "apprentice agreement," with an employer or program sponsor. The term of apprenticeship for each apprenticeable occupation shall be approved by the chief, and in no case shall provide for less than 2,000 hours of reasonably continuous employment for such person and for his or her participation in an approved program of training through employment and through education in related and supplemental subjects.

(Amended by Stats. 1984, Ch. 330, Sec. 6.)

3077.5. A program sponsor administering an apprenticeship program under this chapter shall not provide a maximum age for apprentices.

(Amended by Stats. 1984, Ch. 330, Sec. 7.)

3078. Every apprentice agreement entered into under this chapter shall directly, or by reference, contain:

(a) The names of the contracting parties.

(b) The date of birth of the apprentice.

(c) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.

(d) A statement showing the number of hours to be spent by the apprentice in work and the learning objectives to be accomplished through related and supplemental instruction, except as otherwise provided under Section 3074. These exceptions shall be subject to the appeal procedures established in Sections 3081, 3082, 3083, and 3084. A minimum of 144 hours of related and supplemental instruction for each year of apprenticeship is recommended; however, related instruction may be expressed in terms of units or other objectives to be accomplished. In no case shall the combined weekly hours of work and required related and supplemental instruction of the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age of the apprentice.

(e) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process.

(f) A statement of the graduated scale of wages to be paid the apprentice and whether the required schooltime shall be compensated.

(g) A statement providing for a period of probation of not more than 1,000 hours of employment and not more than 72 hours of related instruction, during which time the apprentice agreement may be terminated by the program sponsor at the request in writing of either party, and providing that after the probationary period the apprentice agreement may be terminated by the administrator by mutual agreement of all parties thereto, or canceled by the administrator for good and sufficient reason.

(h) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally, or which are not covered by collective-bargaining agreement, shall be submitted to the administrator for determination as provided for in Section 3081.

(i) A provision that an employer who is unable to fulfill his or her obligation under the apprentice agreement may, with approval of the administrator, transfer the contract to any other employer if the apprentice consents and the other employer agrees to assume the obligation of the apprentice agreement.

(j) Such additional terms and conditions as may be prescribed or approved by the California Apprenticeship Council, not inconsistent with the provisions of this chapter.

(k) A clause providing that there shall be no liability on the part of the other contracting party for an injury sustained by an apprentice engaged in schoolwork at a time when the employment of the apprentice has been temporarily or permanently terminated.

(Amended by Stats. 1984, Ch. 330, Sec. 8.)

3079. Every apprentice agreement under this chapter shall be approved by the local joint apprenticeship committee or the parties to a collective bargaining agreement or, subject to review by the council, by the administrator where there is no collective bargaining agreement or joint committee, a copy of which shall be filed with the California Apprenticeship Council. Every apprentice agreement shall be signed by the employer, or his or her agent, or by a program sponsor, as provided in Section 3080, and by the apprentice, and if the apprentice is a minor, by the minor's parent or guardian. Where a minor enters into an apprentice agreement under this chapter for a period of training extending into his or her majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

(Amended by Stats. 1984, Ch. 330, Sec. 9.)

3080. (a) For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the California Apprenticeship Council be signed by an association of employers or an organization of employees instead of by an individual employer. In that case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for an apprentice with one or more employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of the apprentice's employment. The apprentice agreement shall also expressly provide for the transfer of the apprentice, subject to the approval of the California Apprenticeship Council, to an employer or employers who shall sign a written agreement with the apprentice, and if the apprentice is a minor, with the apprentice's parent or guardian, as specified in Section 3079, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the apprentice agreement.

(b) All apprenticeship programs with more than one employer or an association of employers shall include provisions sufficient to ensure meaningful representation of the interests of apprentices in the management of the program.

(Amended by Stats. 1999, Ch. 903, Sec. 8. Effective January 1, 2000.)

3081. Upon the complaint of any interested person or upon his own initiative, the administrator may investigate to determine if there has been a violation of the terms of an apprentice agreement, made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigations and determinations. The parties to such agreement shall be given a fair and impartial hearing, after reasonable notice thereof. All such hearings, investigations and determinations shall be made under authority of reasonable rules and procedures prescribed by the California Apprenticeship Council.

(Amended by Stats. 1969, Ch. 313.)

3082. The determination of the administrator shall be filed with the California Apprenticeship Council. If no appeal therefrom is filed with the California Apprenticeship Council within 10 days from the date the parties are given notification of the determination, in accordance with Section 1013a and Section 2015.5 of the Code of Civil Procedure, the determination shall become the order of the California Apprenticeship Council. Any person aggrieved by the determination or action of the administrator may appeal therefrom to the California Apprenticeship Council, which shall review the entire record and may hold a hearing thereon after due notice to the interested parties.

(Amended by Stats. 1984, Ch. 370, Sec. 1.)

3083. The decision of the California Apprenticeship Council as to the facts shall be conclusive if supported by the evidence and all orders and decisions of the California Apprenticeship Council shall be prima facie lawful and reasonable.

(Amended by Stats. 1969, Ch. 313.)

3084. Any party to an apprentice agreement aggrieved by an order or decision of the California Apprenticeship Council may maintain appropriate proceedings in the courts on questions of law. The decision of the California Apprenticeship Council shall be conclusive if the proceeding is not filed within 30 days after the date the aggrieved party is given notification of the decision.

(Amended by Stats. 1984, Ch. 370, Sec. 2.)

3084.5. In any case in which a person or persons have willfully violated any of the laws, regulations, or orders governing applicants for apprenticeship or apprentices registered under this chapter, the Division of Apprenticeship Standards may obtain in a court of competent jurisdiction, an injunction against any further violations of any such laws, regulations, or orders by such person or persons.

(Added by Stats. 1970, Ch. 1504.)

3085. No person shall institute any action for the enforcement of any apprentice agreement, or damages for the breach of any apprentice agreement, made under this chapter, unless he shall first have exhausted all administrative remedies provided by this chapter.

(Repealed and added by Stats. 1939, Ch. 220.)

3086. Nothing in this chapter or in any apprentice agreement approved under this chapter shall operate to invalidate any apprenticeship provision in any collective agreement between

employers and employees setting up higher apprenticeship standards.

(Repealed and added by Stats. 1939, Ch. 220.)

3088. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons and circumstances, shall not be affected thereby.

(Repealed and added by Stats. 1939, Ch. 220.)

3089. This chapter shall be known and may be cited as the Shelley-Maloney Apprentice Labor Standards Act of 1939.

(Repealed and added by Stats. 1939, Ch. 220.)

3090. The Division of Apprenticeship Standards shall investigate, approve or reject applications from establishments for apprenticeship and other on-the-job training, and for that purpose, may cooperate, or contract with, and receive reimbursements from the appropriate agencies of the Federal Government.

(Added by Stats. 1947, Ch. 42.)

3091. Acceptance of an application for entrance into an apprenticeship training program shall not be predicated on the payment of any fee. Reasonable costs for expense incurred may be charged after an applicant has been accepted into the program.

(Added by Stats. 1968, Ch. 1124.)

3091.5. Pursuant to Section 16370 of the Government Code, there is hereby authorized in the State Treasury a Special Deposit Fund Account, which shall consist of moneys collected from the sale of instructional material to persons enrolled in any apprenticeship training program under this chapter. All of the moneys collected are hereby appropriated without regard to fiscal year for the support of the Department of Education to be used for the development and production of apprenticeship instructional material.

(Added by Stats. 1985, Ch. 1546, Sec. 19.)

3092. A successful graduate of a training program in a particular apprenticeable occupation of a vocational education program meeting the standards of the California State Plan for Vocational Education may receive credit toward a term of apprenticeship if the program is jointly established and approved by a school district, a county superintendent of schools, a public entity conducting a regional occupational center or program, or a private postsecondary vocational school accredited by a regional or national accrediting agency recognized by the United States Office of Education and the program sponsor of the particular apprenticeable occupation.

(Amended by Stats. 1984, Ch. 330, Sec. 11.)

3093. (a) This section applies only when voluntarily requested by the parties to a collective bargaining agreement or by an employer, his or her association, or a union, or its representative where there is no collective bargaining agreement.

(b) Nothing in this section may be construed in any way so as to compel, regulate, interfere with, or duplicate the provisions of any established training programs which are operated under the terms of any collective bargaining agreements or unilaterally by any employer or bona fide labor union.

(c) Services contemplated under this section may be provided only when voluntarily requested and shall be denied when it is found that existing prevailing conditions in the area and industry would in any way be lowered or adversely affected.

(d) The California Apprenticeship Council in cooperation with the Department of Education, the Employment Development Department, and the Board of Governors of the California Community Colleges may foster and promote on-the-job training programs other than apprenticeship as follows: (1) programs for journeymen in the apprenticeable occupations to keep them abreast of current techniques, methods, and materials and opportunities for advancement in their industries; (2) programs in other than apprenticeable occupations for workers entering the labor market for the first time or workers entering new occupations by reason of having been displaced from former occupations by reason of economic, industrial, technological scientific changes, or developments; (3) the programs shall be in accord with and agreed to by the parties to any applicable collective bargaining agreements and where appropriate will include joint employer-employee cooperation in the programs.

(e) The Division of Apprenticeship Standards when requested may foster and promote voluntary on-the-job training programs in accordance with this section, and assist employers, employees and other interested persons and agencies in the development and carrying out of the programs. The Division of Apprenticeship Standards shall cooperate in these functions with the Department of Education, the Employment Development Department, and the Board of Governors of the California Community Colleges and other governmental agencies. The Division of Apprenticeship Standards may cooperate with the Department of Corrections and the Department of the Youth Authority in the development of training programs for inmates and releasees of correctional institutions.

(f) The programs, where appropriate, may include related and supplemental classroom instruction offered and administered by state and local boards responsible for vocational education.

(g) The activities and services of the Division of Apprenticeship Standards in training programs under this section shall be performed without curtailing or in any way interfering with the division's activities and services in apprenticeship.

(h) The Division of Apprenticeship Standards may contract with, and receive reimbursements from, appropriate federal, state, and other governmental agencies.

(i) The vocational education activities and services of the Department of Education, the Board of Governors of the California Community Colleges, and local public school districts shall not be abridged or abrogated through implementation of this section.

(j) "On-the-job training" as used in this section refers exclusively to training confined to the needs of a specific occupation and conducted at the jobsite for employed workers.

(k) "Journeyman," as used in this section, means a person who has either (1) completed an accredited apprenticeship in his craft, or (2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the apprenticeship standards for the craft which has workers classified as journeymen in an apprenticeable occupation.

(l) Nothing in this section shall be construed to require prior approval, ratification, or reference of any training program to the Division of Apprenticeship Standards or the Department of Industrial Relations.

(Amended by Stats. 1981, Ch. 714, Sec. 315.)

3095. Every person who willfully discriminates in any recruitment or apprenticeship program on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or both.

(Amended by Stats. 2004, Ch. 788, Sec. 16. Effective January 1, 2005.)

3097. The Department of Industrial Relations, Division of Apprenticeship Standards, may cooperate in the provision of, or provide, services to the Employment Development Department, and to service delivery areas, as designated pursuant to the Job Training Partnership Act (P.L. 97-300, and Division 8 commencing with Section 15000 of the Unemployment Insurance Code). The Department of Industrial Relations, Division of Apprenticeship Standards may enter into any agreements as may be necessary for this purpose.

The Division of Apprenticeship Standards shall exert maximum effort to persuade sponsors of its registered, nonfederally funded, voluntary apprenticeship and on-the-job training programs to accept to the maximum possible extent the eligible persons as described in the Job Training Partnership Act (P.L. 97-300) and Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

(Amended by Stats. 1985, Ch. 351, Sec. 1.)

3098. An apprentice registered in an approved apprenticeship program in any of the building and construction trades shall be employed only as an apprentice when performing any construction work for an employer that is a party, individually or through an employer association, to any apprenticeship agreement or standards covering that individual.

(Added by Stats. 1999, Ch. 903, Sec. 9. Effective January 1, 2000.)

Division 4. Workers' Compensation And Insurance

(Heading of Division 4 amended by Stats. 1979, Ch. 373.)

Part 1. Scope And Operation

(Part 1 enacted by Stats. 1937, Ch. 90.)

Chapter 1. General Provisions

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

3200. The Legislature hereby declares its intent that the term "workmen's compensation" shall hereafter also be known as "workers' compensation, " and that the "Workmen's Compensation Appeals Board" shall hereafter be known as the "Workers' Compensation Appeals Board." In furtherance of this policy it is the desire of the Legislature that references to the terms "workmen's compensation" and "Workmen's Compensation Appeals Board" in this code or elsewhere be changed to "workers' compensation" and "Workers' Compensation Appeals Board" when such laws are being amended for any purpose. This act is declaratory and not amendatory of existing law.

(Amended by Stats. 1981, Ch. 21, Sec. 5. Effective April 18, 1981.)

3201. This division and Division 5 (commencing with Section 6300) are an expression of the police power and are intended to make effective and apply to a complete system of workers' compensation the provisions of Section 4 of Article XIV of the California Constitution.

(Amended by Stats. 1986, Ch. 248, Sec. 157.)

3201.5. (a) Except as provided in subdivisions (b) and (c), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(2) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(3) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(4) Joint labor management safety committees.

(5) A light-duty, modified job or return-to-work program.

(6) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) (1) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this paragraph shall be declared null and void.

(2) The parties may negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and nonoccupational disability benefits through their employer.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) or more, or any employer that paid an annual workers' compensation insurance premium, in California, of two hundred fifty thousand dollars ($250,000) in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of two million dollars ($2,000,000) or more.

(3) Employers or groups of employers that are self-insured in compliance with Section 3700 that would have projected annual

workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(4) Employers covered by an owner or general contractor provided wrap-up insurance policy applicable to a single construction site that develops workers' compensation insurance premiums of two million dollars ($2,000,000) or more with respect to those employees covered by that wrap-up insurance policy.

(d) Employers and labor representatives who meet the eligibility requirements of this section shall be issued a letter by the administrative director advising each employer and labor representative that, based upon the review of all documents and materials submitted as required by the administrative director, each has met the eligibility requirements of this section.

(e) The premium rate for a policy of insurance issued pursuant to this section shall not be subject to the requirements of Section 11732 or 11732.5 of the Insurance Code.

(f) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the collective bargaining agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a valid and active license where that license is required by law as a condition of doing business in the state within the industries set forth in subdivision (a) of Section 3201.5.

(3) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the collective bargaining agreement.

(4) The name, address, and telephone number of the contact person of the employer.

(5) Any other information that the administrative director deems necessary to further the purposes of this section.

(g) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(h) Commencing July 1, 1995, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of collective bargaining agreements received and the number of employees covered by these agreements.

(i) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivision (h) based on the collective bargaining agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis the administrative director shall make available an updated list of employers and unions entering into collective bargaining agreements containing provisions authorized by this section.

(Amended by Stats. 2012, Ch. 363, Sec. 8. Effective January 1, 2013.)

3201.7. (a) Except as provided in subdivision (b), the Department of Industrial Relations and the courts of this state shall recognize as valid and binding any labor-management agreement that meets all of the following requirements:

(1) The labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.

(2) The labor-management agreement is restricted to the establishment of the terms and conditions necessary to implement this section.

(3) The labor-management agreement has been negotiated in accordance with the authorization of the administrative director pursuant to subdivision (d), between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(A) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board. The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation administrative law judge. Any provision for arbitration established pursuant to this section shall not be subject to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

(B) The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.

(C) The use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators under this division.

(D) Joint labor management safety committees.

(E) A light-duty, modified job, or return-to-work program.

(F) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

(b) (1) Nothing in this section shall allow a labor-management agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this paragraph shall be declared null and void.

(2) The parties may negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers that are eligible for group health benefits and nonoccupational disability benefits through their employer.

(c) Subdivision (a) shall apply only to the following:

(1) An employer developing or projecting an annual workers' compensation insurance premium, in California, of fifty thousand dollars ($50,000) or more, and employing at least 50 employees, or any employer that paid an annual workers' compensation insurance premium, in California, of fifty thousand dollars ($50,000), and employing at least 50 employees in at least one of the previous three years.

(2) Groups of employers engaged in a workers' compensation safety group complying with Sections 11656.6 and 11656.7 of the Insurance Code, and established pursuant to a joint labor management safety committee or committees, that develops or projects annual workers' compensation insurance premiums of five hundred thousand dollars ($500,000) or more.

(3) Employers or groups of employers, including cities and counties, that are self-insured in compliance with Section 3700 that would have projected annual workers' compensation costs that meet the requirements of, and that meet the other requirements of, paragraph (1) in the case of employers, or paragraph (2) in the case of groups of employers.

(4) The State of California.

(d) Any recognized or certified exclusive bargaining representative in an industry not covered by Section 3201.5, may file a petition with the administrative director seeking permission to negotiate with an employer or group of employers to enter into a labor-management agreement pursuant to this section. The petition shall specify the bargaining unit or units to be included, the names of the employers or groups of employers, and shall be accompanied by proof of the labor union's status as the exclusive bargaining representative. The current collective bargaining agreement or agreements shall be attached to the petition. The petition shall be in the form designated by the administrative director. Upon receipt of the petition, the administrative director shall promptly verify the petitioner's status as the exclusive bargaining representative. If the petition satisfies the requirements set forth in this subdivision, the administrative director shall issue a letter advising each employer and labor representative of their eligibility to enter into negotiations, for a period not to exceed one year, for the purpose of reaching agreement on a labor-management agreement pursuant to this section. The parties may jointly request, and shall be granted, by the administrative director, an additional one-year period to negotiate an agreement.

(e) No employer may establish or continue a program established under this section until it has provided the administrative director with all of the following:

(1) Upon its original application and whenever it is renegotiated thereafter, a copy of the labor-management agreement and the approximate number of employees who will be covered thereby.

(2) Upon its original application and annually thereafter, a statement signed under penalty of perjury, that no action has been taken by any administrative agency or court of the United States to invalidate the labor-management agreement.

(3) The name, address, and telephone number of the contact person of the employer.

(4) Any other information that the administrative director deems necessary to further the purposes of this section.

(f) No collective bargaining representative may establish or continue to participate in a program established under this section unless all of the following requirements are met:

(1) Upon its original application and annually thereafter, it has provided to the administrative director a copy of its most recent LM-2 or LM-3 filing with the United States Department of Labor, where such filing is required by law, along with a statement, signed under penalty of perjury, that the document is a true and correct copy.

(2) It has provided to the administrative director the name, address, and telephone number of the contact person or persons of the collective bargaining representative or representatives.

(g) Commencing July 1, 2005, and annually thereafter, the Division of Workers' Compensation shall report to the Director of Industrial Relations the number of labor-management agreements received and the number of employees covered by these agreements.

(h) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state. However, the Division of Workers' Compensation shall create derivative works pursuant to subdivision (g) based on the labor-management agreements and data. Those derivative works shall not be confidential, but shall be public. On a monthly basis, the administrative director shall make available an updated list of employers and unions entering into labor-management agreements authorized by this section.

(Amended by Stats. 2012, Ch. 363, Sec. 9. Effective January 1, 2013.)

3201.81. In the horse racing industry, the organization certified by the California Horse Racing Board to represent the majority of licensed jockeys pursuant to subdivision (b) of Section 19612.9 of the Business and Professions Code is the labor organization authorized to negotiate the collective bargaining agreement establishing an alternative dispute resolution system for licensed jockeys pursuant to Section 3201.7.

(Amended by Stats. 2007, Ch. 130, Sec. 184. Effective January 1, 2008.)

3201.9. (a) On or before June 30, 2004, and biannually thereafter, the report required in subdivision (i) of Section 3201.5 and subdivision (h) of Section 3201.7 shall include updated loss experience for all employers and groups of employers participating in a program established under those sections. The report shall include updated data on each item set forth in subdivision (i) of Section 3201.5 and subdivision (h) of Section 3201.7 for the previous year for injuries in 2003 and beyond. Updates for each program shall be done for the original program year and for subsequent years. The insurers, the Department of Insurance, and the rating organization designated by the Insurance Commissioner pursuant to Article 3 (commencing with Section 11750) of Chapter 3 of Part 3 of Division 2 of the Insurance Code, shall provide the administrative director with any information that the administrative director determines is reasonably necessary to conduct the study.

(b) Commencing on and after June 30, 2004, the Insurance Commissioner, or the commissioner's designee, shall prepare for inclusion in the report required in subdivision (i) of Section 3201.5 and subdivision (h) of Section 3201.7 a review of both of the following:

(1) The adequacy of rates charged for these programs, including the impact of scheduled credits and debits.

(2) The comparative results for these programs with other programs not subject to Section 3201.5 or Section 3201.7.

(c) Upon completion of the report, the administrative director shall report the findings to the Legislature, the Department of

Insurance, the designated rating organization, and the programs and insurers participating in the study.

(d) The data obtained by the administrative director pursuant to this section shall be confidential and not subject to public disclosure under any law of this state.

(Amended by Stats. 2004, Ch. 34, Sec. 8. Effective April 19, 2004.)

3202. This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.

(Amended by Stats. 1986, Ch. 248, Sec. 158.)

3202.5. All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. "Preponderance of the evidence" means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

(Amended by Stats. 2004, Ch. 34, Sec. 9. Effective April 19, 2004.)

3203. This division and Division 5 (commencing with Section 6300) do not apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the state, nor to employees injured while they are so engaged, except in so far as these divisions are permitted to apply under the Constitution or laws of the United States.

(Amended by Stats. 1986, Ch. 248, Sec. 159.)

3204. Unless the context otherwise requires, the definitions hereinafter set forth in this chapter shall govern the construction and meaning of the terms and phrases used in this division.

(Enacted by Stats. 1937, Ch. 90.)

3205. "Division" means the Division of Workers' Compensation.

(Amended by Stats. 1994, Ch. 1097, Sec. 10. Effective January 1, 1995.)

3205.5. "Appeals board" means the Workers' Compensation Appeals Board of the Division of Workers' Compensation.

(Amended by Stats. 1994, Ch. 1097, Sec. 11. Effective January 1, 1995.)

3206. "Administrative director" means the Director of the Division of Workers' Compensation.

(Amended by Stats. 1994, Ch. 1097, Sec. 12. Effective January 1, 1995.)

3207. "Compensation" means compensation under this division and includes every benefit or payment conferred by this division upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence.

(Amended by Stats. 2004, Ch. 34, Sec. 10. Effective April 19, 2004.)

3208. "Injury" includes any injury or disease arising out of the employment, including injuries to artificial members, dentures, hearing aids, eyeglasses and medical braces of all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to an injury causing disability.

(Amended by Stats. 1971, Ch. 1064.)

3208.05. (a) "Injury" includes a reaction to or a side effect arising from health care provided by an employer to a health care worker, which health care is intended to prevent the development or manifestation of any bloodborne disease, illness, syndrome, or condition recognized as occupationally incurred by Cal-OSHA, the federal Centers for Disease Control and Prevention, or other appropriate governmental entities. This section shall apply only to preventive health care that the employer provided to a health care worker under the following circumstances: (1) prior to an exposure because of risk of occupational exposure to such a disease, illness, syndrome, or condition, or (2) where the preventive care is provided as a consequence of a documented exposure to blood or bodily fluid containing blood that arose out of and in the course of employment. Such a disease, illness, syndrome, or condition includes, but is not limited to, hepatitis, and the human immunodeficiency virus. Such preventive health care, and any disability indemnity or other benefits required as a result of the preventive health care provided by the employer, shall be compensable under the workers' compensation system. The employer may require the health care worker to document that the employer provided the preventive health care and that the reaction or side effects arising from the preventive health care resulted in lost work time, health care costs, or other costs normally compensable under workers' compensation.

(b) The benefits of this section shall not be provided to a health care worker for a reaction to or side effect from health care intended to prevent the development of the human immunodeficiency virus if the worker claims a work-related exposure and if the worker tests positive within 48 hours of that exposure to a test to determine the presence of the human immunodeficiency virus.

(c) For purposes of this section, "health care worker" includes any person who is an employee of a provider of health care as defined in Section 56.05 of the Civil Code, and who is exposed to human blood or other bodily fluids contaminated with blood in the course of employment, including, but not limited to, a registered nurse, a licensed vocational nurse, a certified nurse aide, clinical laboratory technologist, dental hygienist, physician, janitor, and housekeeping worker. "Health care worker" does not include an employee who provides employee health services for an employer primarily engaged in a business other than providing health care.

(Amended by Stats. 2013, Ch. 444, Sec. 19. Effective January 1, 2014.)

3208.1. An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.

(Amended by Stats. 1973, Ch. 1024.)

3208.2. When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

(Added by Stats. 1968, 1st Ex. Sess., Ch. 4.)

3208.3. (a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(b) (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or his or her dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.

(e) Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

(1) Sudden and extraordinary events of employment were the cause of the injury.

(2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.

(3) The employee's medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.

(4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.

(5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(f) For purposes of this section, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district's final decision not to reemploy that person.

(g) A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this subdivision, and this subdivision shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this subdivision inapplicable to the employee.

(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(i) When a psychiatric injury claim is filed against an employer, and an application for adjudication of claim is filed by an employer or employee, the division shall provide the employer with information concerning psychiatric injury prevention programs.

(j) An employee who is an inmate, as defined in subdivision (e) of Section 3351, or his or her family on behalf of an inmate, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.

(Amended by Stats. 1994, Ch. 497, Sec. 1. Effective January 1, 1995.)

3208.4. In any proceeding under this division involving an injury arising out of alleged conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning sexual conduct of the applicant with any person other than the defendant, whether consensual or nonconsensual or prior or subsequent to the alleged act complained of, shall establish specific facts showing good cause for that discovery on a noticed motion to the appeals board. The motion shall not be made or considered at an ex parte hearing.

The procedures set forth in Section 783 of the Evidence Code shall be followed if evidence of sexual conduct of the applicant is offered to attack his or her credibility. Opinion evidence, evidence of reputation, and evidence of specific instances of sexual conduct of the applicant with any person other than the defendant, or any of such evidence, is not admissible by the defendant to prove consent by or the absence of injury to the applicant, unless the injury alleged by the applicant is in the nature of loss of consortium.

(Added by Stats. 1993, Ch. 121, Sec. 24. Effective July 16, 1993.)

3209. "Damages" means the recovery allowed in an action at law as contrasted with compensation.

(Enacted by Stats. 1937, Ch. 90.)

3209.3. (a) "Physician" includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) "Psychologist" means a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

(e) Nothing in this section shall be construed to authorize acupuncturists to determine disability for the purposes of Article

3 (commencing with Section 4650) of Chapter 2 of Part 2, or under Section 2708 of the Unemployment Insurance Code.

(Amended (as amended by Stats. 1996, Ch. 26, Sec. 1) by Stats. 1997, Ch. 98, Sec. 1. Effective January 1, 1998.)

3209.4. The inclusion of optometrists in Section 3209.3 does not imply any right or entitle any optometrist to represent, advertise, or hold himself out as a physician.

(Added by Stats. 1947, Ch. 1404.)

3209.5. Medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, includes but is not limited to services and supplies by physical therapists, chiropractic practitioners, and acupuncturists, as licensed by California state law and within the scope of their practice as defined by law.

(Amended by Stats. 1998, Ch. 440, Sec. 1. Effective January 1, 1999.)

3209.6. The inclusion of chiropractors in Sections 3209.3 and 3209.5 does not imply any right or entitle any chiropractor to represent, advertise, or hold himself out as a physician.

(Added by Stats. 1945, Ch. 629.)

3209.7. Treatment of injuries at the expense of the employer may also include, either in addition to or in place of medical, surgical, and hospital services, as specified in Section 3209.5, any other form of therapy, treatment, or healing practice agreed upon voluntarily in writing, between the employee and his employer. Such agreement may be entered into at any time after employment and shall be in a form approved by the Department of Industrial Relations, and shall include at least the following items:

(a) A description of the form of healing practice intended to be relied upon and designation of individuals and facilities qualified to administer it.

(b) The employee shall not by entering into such an agreement or by selecting such therapy, treatment or healing practice, waive any rights conferred upon him by law, or forfeit any benefits to which he might otherwise be entitled.

(c) The employer and the employee shall each reserve the right to terminate such agreement upon seven days written notice to the other party.

No liability shall be incurred by the employer under the provisions of this section, except as provided for in Chapter 3 (commencing with Section 3600), of this part.

(Added by Stats. 1970, Ch. 1250.)

3209.8. Treatment reasonably required to cure or relieve from the effects of an injury shall include the services of marriage and family therapists and clinical social workers licensed by California state law and within the scope of their practice as defined by California state law if the injured person is referred to the marriage and family therapist or the clinical social worker by a licensed physician and surgeon, with the approval of the employer, for treatment of a condition arising out of the injury. Nothing in this section shall be construed to authorize marriage and family therapists or clinical social workers to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2. The requirement of this section that the employer approve the referral by a licensed physician or surgeon shall not be construed to preclude reimbursement for self-procured treatment, found by the appeals board to be otherwise compensable pursuant to this division, where the employer has refused to authorize any treatment for the condition arising from the injury treated by the marriage and family therapist or clinical social worker.

(Amended by Stats. 2002, Ch. 1013, Sec. 94. Effective January 1, 2003.)

3209.9. The inclusion of acupuncturists in Section 3209.3 does not imply any right or entitle any acupuncturist to represent, advertise, or hold himself or herself out as a physician or surgeon holding an M.D. or D.O. degree.

(Added by Stats. 1997, Ch. 98, Sec. 3. Effective January 1, 1998.)

3209.10. (a) Medical treatment of a work-related injury required to cure or relieve the effects of the injury may be provided by a state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized scope of practice. The reviewing or supervising physician and surgeon of the physician assistant or nurse practitioner shall be deemed to be the treating physician. For the purposes of this section, "medical treatment" includes the authority of the nurse practitioner or physician assistant to authorize the patient to receive time off from work for a period not to exceed three calendar days if that authority is included in a standardized procedure or protocol approved by the supervising physician. The nurse practitioner or physician assistant may cosign the Doctor's First Report of Occupational Injury or Illness. The treating physician shall make any determination of temporary disability and shall sign the report.

(b) The provision of subdivision (a) that requires the cosignature of the treating physician applies to this section only and it is not the intent of the Legislature that the requirement apply to any other section of law or to any other statute or regulation. Nothing in this section implies that a nurse practitioner or physician assistant is a physician as defined in Section 3209.3.

(Amended by Stats. 2004, Ch. 100, Sec. 1. Effective January 1, 2005.)

3210. "Person" includes an individual, firm, voluntary association, or a public, quasi public, or private corporation.

(Enacted by Stats. 1937, Ch. 90.)

3211. "Insurer" includes the State Compensation Insurance Fund and any private company, corporation, mutual association, reciprocal or interinsurance exchange authorized under the laws of this State to insure employers against liability for compensation and any employer to whom a certificate of consent to self-insure has been issued.

(Enacted by Stats. 1937, Ch. 90.)

3211.5. For purposes of this division, whenever the term "firefighter," "firefighting member," and "member of a fire department" is used, the term shall include, but shall not be limited to, unless the context expressly provides otherwise, a person engaged in providing firefighting services who is an apprentice, volunteer, or employee on a partly paid or fully paid basis.

(Added by Stats. 2002, Ch. 870, Sec. 2. Effective January 1, 2003.)

3211.9. "Disaster council" means a public agency established by ordinance which is empowered to register and direct the activities of disaster service workers within the area of the county, city, city and county, or any part thereof, and is thus, because of such registration and direction, acting as an instrumentality of the state in aid of the carrying out of the general governmental functions and policy of the state.

(Amended by Stats. 1971, Ch. 38.)

3211.91. "Accredited disaster council" means a disaster council that is certified by the Office of Emergency Services as conforming with the rules and regulations established by the office pursuant to Article 10 (commencing with Section 8610) of Chapter 7 of Division 1 of Title 2 of the Government Code. A disaster council remains accredited only while the certification of the Office of Emergency Services is in effect and is not revoked.

(Amended by Stats. 2013, Ch. 352, Sec. 400. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

3211.92. (a) "Disaster service worker" means any natural person who is registered with an accredited disaster council or a state agency for the purpose of engaging in disaster service pursuant to the California Emergency Services Act without pay or other consideration.

(b) "Disaster service worker" includes public employees performing disaster work that is outside the course and scope of their regular employment without pay and also includes any unregistered person impressed into service during a state of war emergency, a state of emergency, or a local emergency by a person having authority to command the aid of citizens in the execution of his or her duties.

(c) Persons registered with a disaster council at the time that council becomes accredited need not reregister in order to be entitled to the benefits provided by Chapter 10 (commencing with Section 4351).

(d) "Disaster service worker" does not include any member registered as an active firefighting member of any regularly organized volunteer fire department, having official recognition, and full or partial support of the county, city, or district in which the fire department is located.

(Amended by Stats. 2000, Ch. 506, Sec. 33. Effective January 1, 2001.)

3211.93. "Disaster service" means all activities authorized by and carried on pursuant to the California Emergency Services Act, including training necessary or proper to engage in such activities.

(Amended by Stats. 1971, Ch. 438.)

3211.93a. "Disaster service" does not include any activities or functions performed by a person if the accredited disaster council with which that person is registered receives a fee or other compensation for the performance of those activities or functions by that person.

(Amended by Stats. 2000, Ch. 506, Sec. 34. Effective January 1, 2001.)

3212. In the case of members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether those members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while the member is in the service in the office, staff, division, department, or unit, and in the case of members of fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of the office, staff, department, or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia that manifests itself or develops during a period while the officer is in the service. The compensation that is awarded for the hernia, heart trouble, or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. The presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(Amended by Stats. 2002, Ch. 664, Sec. 164. Effective January 1, 2003.)

3212.1. (a) This section applies to all of the following:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.

(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

(B) For purposes of this paragraph, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(b) The term "injury," as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department

or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(c) The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999–2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

(f) This section shall be known, and may be cited, as the William Dallas Jones Cancer Presumption Act of 2010.

(Amended by Stats. 2011, Ch. 550, Sec. 1. Effective January 1, 2012.)

3212.2. In the case of officers and employees in the Department of Corrections having custodial duties, each officer and employee in the Department of Youth Authority having group supervisory duties, and each security officer employed at the Atascadero State Hospital, the term "injury" includes heart trouble which develops or manifests itself during a period while such officer or employee is in the service of such department or hospital.

The compensation which is awarded for such heart trouble shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workmen's compensation laws of this state.

Such heart trouble so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(Amended by Stats. 1976, Ch. 466.)

3212.3. In the case of a peace officer who is designated under subdivision (a) of Section 2250.1 of the Vehicle Code and who has graduated from an academy certified by the Commission on Peace Officer Standards and Training, when that officer is employed upon a regular, full-time salary, the term "injury," as used in this division, includes heart trouble and pneumonia which develops or manifests itself during a period while that officer is in the service of the Department of the California Highway Patrol. The compensation which is awarded for the heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by this division.

The heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. However, a peace officer of the Department of the California Highway Patrol, as designated under subdivision (a) of Section 2250.1 of the Vehicle Code, shall have served five years or more in that capacity or as a peace officer with the former California State Police Division, or in both capacities, before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

The heart trouble or pneumonia so developing or manifesting itself in these cases shall in no case be attributed to any disease existing prior to that development or manifestation.

The term "peace officers" as used herein shall be limited to those employees of the Department of the California Highway Patrol who are designated as peace officers under subdivision (a) of Section 2250.1 of the Vehicle Code.

(Amended by Stats. 1996, Ch. 305, Sec. 41. Effective January 1, 1997.)

3212.4. In the case of a member of a University of California fire department located at a campus or other facility administered by the Regents of University of California, when any such member is employed by such a department upon a regular, full-time salary, on a nonprobationary basis, the term "injury" as used in this division includes heart trouble, hernia, or pneumonia which develops or manifests itself during a period while such member is in the service of such a University of California fire department. The compensation which is awarded for such heart trouble, hernia, or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble, hernia, or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble, hernia, or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "member" as used herein shall exclude those employees of a University of California fire department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(Amended by Stats. 1976, Ch. 466.)

3212.5. In the case of a member of a police department of a city or municipality, or a member of the State Highway Patrol, when any such member is employed upon a regular, full-time salary, and in the case of a sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county, employed upon a regular, full-time salary, the

term "injury" as used in this division includes heart trouble and pneumonia which develops or manifests itself during a period while such member, sheriff, or deputy sheriff, inspector or investigator is in the service of the police department, the State Highway Patrol, the sheriff's office or the district attorney's office, as the case may be. The compensation which is awarded for such heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the member of the police department, State Highway Patrol, the sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "members" as used herein shall be limited to those employees of police departments, the California Highway Patrol and sheriffs' departments and inspectors and investigators of a district attorney's office who are defined as peace officers in Section 830.1, 830.2, or 830.3 of the Penal Code.

(Amended by Stats. 1976, Ch. 466.)

3212.6. In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

(Amended by Stats. 2001, Ch. 833, Sec. 3. Effective January 1, 2002.)

3212.7. In the case of an employee in the Department of Justice falling within the "state safety" class, when any such individual is employed under civil service upon a regular, full-time salary, the term "injury," as used in this division, includes heart trouble or hernia or pneumonia or tuberculosis which develops or manifests itself during the period while such individual is in the service of the Department of Justice. The compensation which is awarded for any such injury shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble, hernia, pneumonia, or tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble, hernia, pneumonia, or tuberculosis developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

(Amended by Stats. 1976, Ch. 466.)

3212.8. (a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term "injury" as used in this division, includes a blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection when any part of the blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for a blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) (1) The blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This

presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it.

(2) The blood-borne infectious disease presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(3) Notwithstanding paragraph (2), the methicillin-resistant Staphylococcus aureus skin infection presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of 90 days, commencing with the last day actually worked in the specified capacity.

(c) The blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection so developing or manifesting itself in those cases shall in no case be attributed to any disease or skin infection existing prior to that development or manifestation.

(d) For the purposes of this section, "blood-borne infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(Amended by Stats. 2008, Ch. 684, Sec. 2. Effective January 1, 2009.)

3212.85. (a) This section applies to peace officers described in Sections 830.1 to 830.5, inclusive, of the Penal Code, and members of a fire department.

(b) The term "injury," as used in this division, includes illness or resulting death due to exposure to a biochemical substance that develops or occurs during a period in which any member described in subdivision (a) is in the service of the department or unit.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The injury that develops or manifests itself in these cases shall be presumed to arise out of, and in the course of, the employment. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) For purposes of this section, the following definitions apply:

(1) "Biochemical substance" means any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as these terms are defined in Section 11417 of the Penal Code.

(2) "Members of a fire department" includes, but is not limited to, an apprentice, volunteer, partly paid, or fully paid member of any of the following:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(Added by Stats. 2002, Ch. 870, Sec. 3. Effective January 1, 2003.)

3212.9. In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(Amended by Stats. 2001, Ch. 833, Sec. 5. Effective January 1, 2002.)

3212.10. In the case of a peace officer of the Department of Corrections who has custodial or supervisory duties of inmates or parolees, or a peace officer of the Department of the Youth Authority who has custodial or supervisory duties of wards or parolees, or a peace officer as defined in Section 830.5 of the Penal Code and employed by a local agency, the term "injury" as used in this division includes heart trouble, pneumonia, tuberculosis, and meningitis that develops or manifests itself during a period in which any peace officer covered under this section is in the service of the department or unit. The compensation that is awarded for that injury shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The heart trouble, pneumonia, tuberculosis, and meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(Amended by Stats. 2002, Ch. 664, Sec. 165. Effective January 1, 2003.)

3212.11. This section applies to both of the following: (a) active lifeguards employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, and (b) active state lifeguards employed by the Department of Parks and Recreation. The term "injury," as used

in this division, includes skin cancer that develops or manifests itself during the period of the lifeguard's employment. The compensation awarded for that injury shall include full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as provided by the provisions of this division.

Skin cancer so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board shall find in accordance with it. This presumption shall be extended to a lifeguard following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Skin cancer so developing or manifesting itself in these cases shall not be attributed to any disease existing prior to that development or manifestation.

This section shall only apply to lifeguards employed for more than three consecutive months in a calendar year.

(Added by Stats. 2001, Ch. 846, Sec. 1. Effective January 1, 2002.)

3212.12. (a) This section applies to peace officers, as defined in subdivision (b) of Section 830.1 of the Penal Code, subdivisions (e), (f), and (g) of Section 830.2 of the Penal Code, and corpsmembers, as defined by Section 14302 of the Public Resources Code, and other employees at the California Conservation Corps classified as any of the following:

Title	Class
Backcounty Trails Camp Supervisor, California Conservation Corps	1030
Conservationist I, California Conservation Corps	1029
Conservationist II, California Conservation Corps	1003
Conservationist II, Nursery California Conservation Corps	7370

(b) The term "injury," as used in this division, includes Lyme disease that develops or manifests itself during a period in which any person described in subdivision (a) is in the service of the department.

(c) The compensation that is awarded for Lyme disease shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) Lyme disease so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the Lyme disease is not reasonably linked to the work performance. Unless so controverted, the appeals board shall find in accordance with the presumption. This presumption shall be extended to a person described in subdivision (a) following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(Added by Stats. 2002, Ch. 876, Sec. 1. Effective January 1, 2003.)

3213. In the case of a member of the University of California Police Department who has graduated from an academy certified by the Commission on Peace Officer Standards and Training, when he and all members of the campus department of which he is a member have graduated from such an academy, and when any such member is employed upon a regular, full-time salary, the term "injury" as used in this division includes heart trouble and pneumonia which develops or manifests itself during a period while such member is in the service of such campus department of the University of California Police Department. The compensation which is awarded for such heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the member of the University of California Police Department shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

As used in this section:

(a) "Members" shall be limited to those employees of the University of California Police Department who are defined as peace officers in Section 830.2 of the Penal Code.

(b) "Campus" shall include any campus or other installation maintained under the jurisdiction of the Regents of the University of California.

(c) "Campus department" means all members of the University of California Police Department who are assigned and serve on a particular campus.

(Amended by Stats. 1976, Ch. 466.)

3213.2. (a) In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a peace officer employed by the Department of the California Highway Patrol, or a peace officer employed by the University of California, who has been employed for at least five years as a peace officer on a regular, full-time salary and has been required to wear a duty belt as a condition of employment, the term "injury," as used in this division, includes lower back impairments. The compensation that is awarded for lower back impairments shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

(b) The lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) For purposes of this section, "duty belt" means a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement.

(Added by Stats. 2001, Ch. 834, Sec. 1. Effective January 1, 2002.)

3214. (a) The Department of Corrections and the Department of the Youth Authority shall, in conjunction with all recognized employee representative associations, develop policy and implement the workers' compensation early intervention program by December 31, 1989, for all department employees who sustain an injury. The program shall include, but not be limited to, counseling by an authorized independent early intervention counselor and the services of an agreed medical panel to assist in timely decisions regarding compensability. Costs of services through early intervention shall be borne by the departments.

(b) It is the intent of the Legislature to reduce all costs associated with the delivery of workers' compensation benefits, in balance with the need to ensure timely and adequate benefits to the injured worker. Toward this goal the workers' compensation early intervention program was established in the Department of Corrections and the Department of the Youth Authority. The fundamental concept of the program is to settle disputes rather than to litigate them. This is a worthwhile concept in terms of cost control for the employer and timely receipt of benefits for the worker. To ascertain the effectiveness of the program is crucial in helping guide policy in this arena.

(Amended by Stats. 2001, Ch. 745, Sec. 157. Effective October 12, 2001.)

3215. Except as otherwise permitted by law, any person acting individually or through his or her employees or agents, who offers, delivers, receives, or accepts any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring clients or patients to perform or obtain services or benefits pursuant to this division, is guilty of a crime.

(Added by Stats. 1991, Ch. 116, Sec. 26.)

3217. (a) Section 3215 shall not be construed to prevent the recommendation of professional employment where that recommendation is not prohibited by the Rules of Professional Conduct of the State Bar.

(b) Section 3215 shall not be construed to prohibit a public defender or assigned counsel from making known his or her availability as a criminal defense attorney to persons unable to afford legal counsel, whether or not those persons are in custody.

(c) Any person who commits an act that violates both Section 3215 and either Section 650 of the Business and Professions Code or Section 750 of the Insurance Code shall, upon conviction, have judgment and sentence imposed for only one violation for any act.

(d) Section 3215 shall not be construed to prohibit the payment or receipt of consideration or services that is lawful pursuant to Section 650 of the Business and Professions Code.

(e) Notwithstanding Sections 3215 and 3219, and Section 750 of the Insurance Code, nothing shall prevent an attorney at law or a law firm from providing any person or entity with legal advice, information, or legal services, including the providing of printed, copied, or written documents, either without charge or for an otherwise lawfully agreed upon attorney fee.

(f) Section 3215 shall not be construed to prohibit a workers' compensation insurer from offering, and an employer from accepting, a workers' compensation insurance policy with rates that reflect premium discounts based upon the employer securing coverage for occupational or nonoccupational illnesses or injuries from a health care service plan or disability insurer that is owned by, affiliated with, or has a contractual relationship with, the workers' compensation insurer.

(Amended by Stats. 1995, Ch. 886, Sec. 4. Effective January 1, 1996.)

3218. A violation of Section 3215 is a public offense punishable upon a first conviction by incarceration in the county jail for not more than one year, or by incarceration in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both incarceration and fine. A second or subsequent conviction is punishable by incarceration in state prison.

(Added by Stats. 1991, Ch. 116, Sec. 28.)

3219. (a) (1) Except as otherwise permitted by law, any person acting individually or through his or her employees or agents, who offers or delivers any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration to any adjuster of claims for compensation, as defined in Section 3207, as compensation, inducement, or reward for the referral or settlement of any claim, is guilty of a felony.

(2) Except as otherwise permitted by law, any adjuster of claims for compensation, as defined in Section 3207, who accepts or receives any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, as compensation, inducement, or reward for the referral or settlement of any claim, is guilty of a felony.

(b) Any contract for professional services secured by any medical clinic, laboratory, physician or other health care provider in this state in violation of Section 550 of the Penal Code, Section 1871.4 of the Insurance Code, Section 650 or 651 of the Business and Professions Code, or Section 3215 or subdivision (a) of Section 3219 of this code is void. In any action against any medical clinic, laboratory, physician, or other health care provider, or the owners or operators thereof, under Chapter 4 (commencing with Section 17000) or Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code, any judgment shall include an order divesting the medical clinic, laboratory, physician, or other health care provider, and the owners and operators thereof, of any fees and other compensation received pursuant to any such void contract. Those fees and compensation shall be recoverable as additional civil penalties under Chapter 4 (commencing with Section 17000) or Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code. The judgment may also include an order prohibiting the person from further participating in any manner in the entity in which that person directly or indirectly owned or operated for a time period that the court deems appropriate. For the purpose of this section, "operated" means participated in the management, direction, or control of the entity.

(c) Notwithstanding Section 17206 or any other provision of law, any fees recovered pursuant to subdivision (b) in an action involving professional services related to the provision of workers' compensation shall be allocated as follows: if the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the State General Fund, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a district attorney, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund; if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half of the penalty collected shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund. Moneys deposited into the Workers' Compensation Fraud Account pursuant to this

subdivision shall be used in the investigation and prosecution of workers' compensation fraud, as appropriated by the Legislature.

(Added by Stats. 1993, Ch. 120, Sec. 4. Effective July 16, 1993.)

Chapter 2. Employers, Employees, and Dependents

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

Article 1. Employers

(Article 1 enacted by Stats. 1937, Ch. 90.)

3300. As used in this division, "employer" means:

(a) The State and every State agency.

(b) Each county, city, district, and all public and quasi public corporations and public agencies therein.

(c) Every person including any public service corporation, which has any natural person in service.

(d) The legal representative of any deceased employer.

(Enacted by Stats. 1937, Ch. 90.)

3301. As used in this division, "employer" excludes the following:

(a) Any person while acting solely as the sponsor of a bowling team.

(b) Any private, nonprofit organization while acting solely as the sponsor of a person who, as a condition of sentencing by a superior or municipal court, is performing services for the organization.

The exclusions of this section do not exclude any person or organization from the application of this division which is otherwise an employer for the purposes of this division.

(Amended by Stats. 1981, Ch. 21, Sec. 7. Effective April 18, 1981.)

3302. (a) (1) When a licensed contractor enters an agreement with a temporary employment agency, employment referral service, labor contractor, or other similar entity for the entity to supply the contractor with an individual to perform acts or contracts for which the contractor's license is required under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and the licensed contractor is responsible for supervising the employee's work, the temporary employment agency, employment referral service, labor contractor, or other similar entity shall pay workers' compensation premiums based on the contractor's experience modification rating.

(2) The temporary employment agency, employment referral service, labor contractor, or other similar entity described in paragraph (1) shall report to the insurer both of the following:

(A) Its payroll on a monthly basis in sufficient detail to allow the insurer to determine the number of workers provided and the wages paid to these workers during the period the workers were supplied to the licensed contractor.

(B) The licensed contractor's name, address, and experience modification factor as reported by the licensed contractor.

(C) The workers' compensation classifications associated with the payroll reported pursuant to subparagraph (A). Classifications shall be assigned in accordance with the rules set forth in the California Workers' Compensation Uniform Statistical Reporting Plan published by the Workers' Compensation Insurance Rating Bureau.

(b) The temporary employment agency, employment referral service, labor contractor, or other similar entity supplying the individual under the conditions specified in subdivision (a) shall be solely responsible for the individual's workers' compensation, as specified in subdivision (a).

(c) Nothing in this section is intended to change existing law in effect on December 31, 2002, as it relates to the sole remedy provisions of this division and the special employer provisions of Section 11663 of the Insurance Code.

(d) A licensed contractor that is using a temporary worker supplied pursuant to subdivision (a) shall notify the temporary employment agency, employment referral service, labor contractor, or other similar entity that supplied that temporary worker when either of the following occurs:

(1) The temporary worker is being used on a public works project.

(2) The contractor reassigns a temporary worker to a position other than the classification to which the worker was originally assigned.

(e) A temporary employment agency, employment referral service, labor contractor, or other similar entity may pass through to a licensed contractor any additional costs incurred as a result of this section.

(Added by Stats. 2002, Ch. 1098, Sec. 1. Effective January 1, 2003.)

Article 2. Employees

(Article 2 enacted by Stats. 1937, Ch. 90.)

3350. Unless the context otherwise requires, the definitions set forth in this article shall govern the construction and meaning of the terms and phrases used in this division.

(Enacted by Stats. 1937, Ch. 90.)

3351. "Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with subdivision (p) of Section 3352.

(d) Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with subdivision (q) of Section 3352.

(Amended by Stats. 2016, Ch. 205, Sec. 1. Effective January 1, 2017.)

3351.5. "Employee" includes:

(a) Any person whose employment training is arranged by the State Department of Rehabilitation with any employer. Such person shall be deemed an employee of such employer for workers' compensation purposes; provided that, the department shall bear the full amount of any additional workers' compensation

insurance premium expense incurred by the employer due to the provisions of this section.

(b) Any person defined in subdivision (d) of Section 3351 who performs domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code. For purposes of Section 3352, such person shall be deemed an employee of the recipient of such services for workers' compensation purposes if the state or county makes or provides for direct payment to such person or to the recipient of in-home supportive services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.

(c) Any person while engaged by contract for the creation of a specially ordered or commissioned work of authorship in which the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire, as defined in Section 101 of Title 17 of the United States Code, and the ordering or commissioning party obtains ownership of all the rights comprised in the copyright in the work.

(Amended by Stats. 1982, Ch. 1332, Sec. 1.)

3352. "Employee" excludes the following:

(a) A person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) A person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) A person holding an appointment as deputy clerk or deputy sheriff appointed for his or her own convenience, and who does not receive compensation from the county or municipal corporation or from the citizens of that county or municipal corporation for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive that person from recourse against a private person employing him or her for injury occurring in the course of, and arising out of, the employment.

(d) A person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who does not receive compensation for those services, other than meals, lodging, or transportation.

(e) A person performing voluntary service as a ski patrolman who does not receive compensation for those services, other than meals or lodging or the use of ski tow or ski lift facilities.

(f) A person employed by a ski lift operator to work at a snow ski area who is relieved of, and is not performing any, prescribed duties, while participating in recreational activities on his or her own initiative.

(g) A person, other than a regular employee, participating in sports or athletics who does not receive compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) A person described in subdivision (d) of Section 3351 whose employment by the employer to be held liable, during the 90 calendar days immediately preceding the date of injury, for injuries as described in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury, for diseases or injuries as described in Section 5412, comes within either of the following descriptions:

(1) The employment was, or was contracted to be, for less than 52 hours.

(2) The employment was, or was contracted to be, for wages of not more than one hundred dollars ($100).

(i) A person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) A person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by a public agency or private, nonprofit organization, who does not receive remuneration for these services, other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) A student participating as an athlete in amateur sporting events sponsored by a public agency or public or private nonprofit college, university, or school, who does not receive remuneration for the participation, other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(l) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(m) A law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.39 of the Penal Code.

(n) A person, other than a regular employee, performing services as a sports official for an entity sponsoring an intercollegiate or interscholastic sports event, or any person performing services as a sports official for a public agency, public entity, or a private nonprofit organization, which public agency, public entity, or private nonprofit organization sponsors an amateur sports event. For purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.

(o) A person who is an owner-builder, as defined in subdivision (a) of Section 50692 of the Health and Safety Code, who is participating in a mutual self-help housing program, as defined in Section 50087 of the Health and Safety Code, sponsored by a nonprofit corporation.

(p) An officer or member of the board of directors, as described in subdivision (c) of Section 3351, if he or she owns at least 15 percent of the issued and outstanding stock of the corporation and executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying officer or director. The waiver shall be effective upon the date of receipt and acceptance by the corporation's insurance carrier and shall remain effective until the officer or member of the board of directors provides the insurance carrier with a written withdrawal of the waiver.

(q) An individual who is a general partner of a partnership or a managing member of a limited liability company who executes a written waiver of his or her rights under this chapter stating under penalty of perjury that the person is a qualifying general partner or managing member. The waiver shall be effective upon the date of receipt and acceptance by the partnership or limited liability company's insurance carrier and shall remain effective until the general partner or managing member provides the insurance carrier with a written withdrawal of the waiver.

(Amended by Stats. 2016, Ch. 205, Sec. 2. Effective January 1, 2017.)

3352.94. "Employee" excludes a disaster service worker while performing services as a disaster service worker except as provided in Chapter 10 of this part. "Employee" excludes any unregistered person performing like services as a disaster service worker without pay or other consideration, except as provided by Section 3211.92 of this code.

(Amended by Stats. 1951, Ch. 1440.)

3353. "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

(Enacted by Stats. 1937, Ch. 90.)

3354. Employers of employees defined by subdivision (d) of Section 3351 shall not be subject to the provisions of Sections 3710, 3710.1, 3710.2, 3711, 3712, and 3722, or any other penalty provided by law, for failure to secure the payment of compensation for such employees.

This section shall not apply to employers of employees specified in subdivision (b) of Section 3715, with respect to such employees.

(Repealed and added by Stats. 1977, Ch. 17.)

3355. As used in subdivision (d) of Section 3351, the term "course of trade, business, profession, or occupation" includes all services tending toward the preservation, maintenance, or operation of the business, business premises, or business property of the employer.

(Added by Stats. 1977, Ch. 17.)

3356. As used in subdivision (d) of Section 3351 and in Section 3355, the term "trade, business, profession, or occupation" includes any undertaking actually engaged in by the employer with some degree of regularity, irrespective of the trade name, articles of incorporation, or principal business of the employer.

(Added by Stats. 1977, Ch. 17.)

3357. Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.

(Enacted by Stats. 1937, Ch. 90.)

3358. Watchmen for nonindustrial establishments, paid by subscription by several persons, are not employees under this division. In other cases where watchmen, paid by subscription by several persons, have at the time of the injury sustained by them taken out and maintained in force insurance upon themselves as self-employing persons, conferring benefits equal to those conferred by this division, the employer is not liable under this division.

(Enacted by Stats. 1937, Ch. 90.)

3360. Workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of the labor on a particular piece of work are employees of the person having such work executed. In respect to injuries which occur while such workmen maintain in force insurance in an insurer, insuring to themselves and all persons employed by them benefits identical with those conferred by this division the person for whom such work is to be done is not liable as an employer under this division.

(Enacted by Stats. 1937, Ch. 90.)

3361. Each member registered as an active firefighting member of any regularly organized volunteer fire department, having official recognition, and full or partial support of the government of the county, city, town, or district in which the volunteer fire department is located, is an employee of that county, city, town, or district for the purposes of this division, and is entitled to receive compensation from the county, city, town or district in accordance with the provisions thereof.

(Amended by Stats. 1984, Ch. 114, Sec. 3.)

3361.5. Notwithstanding Section 3351, a volunteer, unsalaried person authorized by the governing board of a recreation and park district to perform volunteer services for the district shall, upon the adoption of a resolution of the governing board of the district so declaring, be deemed an employee of the district for the purposes of this division and shall be entitled to the workers' compensation benefits provided by this division for any injury sustained by him or her while engaged in the performance of any service under the direction and control of the governing board of the recreation and park district.

(Amended by Stats. 1982, Ch. 454, Sec. 134.)

3362. Each male or female member registered as an active policeman or policewoman of any regularly organized police department having official recognition and full or partial support of the government of the county, city, town or district in which such police department is located, shall, upon the adoption of a resolution by the governing body of the county, city, town or district so declaring, be deemed an employee of such county, city, town or district for the purpose of this division and shall be entitled to receive compensation from such county, city, town or district in accordance with the provisions thereof.

(Added by Stats. 1959, Ch. 1650.)

3362.5. Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, or a reserve police officer of a regional park district or a transit district, and is assigned specific police functions by that authority, the person is an employee of the county, city, city and county, town, or district for the purposes of this division while performing duties as a peace officer if the person is not performing services as a disaster service worker for purposes of Chapter 10 (commencing with Section 4351).

(Added by Stats. 1989, Ch. 892, Sec. 25.5.)

3363. Each member registered with the Department of Fish and Game as an active member of the reserve fish and game warden program of the department is an employee of the department for the purposes of this division, and is entitled to receive compensation from the department in accordance with the provisions thereof.

(Added by Stats. 1961, Ch. 1394.)

3363.5. (a) Notwithstanding Sections 3351, 3352, and 3357, a person who performs voluntary service without pay for a public agency, as designated and authorized by the governing body of the agency or its designee, shall, upon adoption of a resolution by the governing body of the agency so declaring, be deemed to be an employee of the agency for purposes of this division while performing such service.

(b) For purposes of this section, "voluntary service without pay" shall include services performed by any person, who receives

no remuneration other than meals, transportation, lodging, or reimbursement for incidental expenses.

(Amended by Stats. 1979, Ch. 76.)

3363.6. (a) Notwithstanding Sections 3351, 3352, and 3357, a person who performs voluntary service without pay for a private, nonprofit organization, as designated and authorized by the board of directors of the organization, shall, when the board of directors of the organization, in its sole discretion, so declares in writing and prior to the injury, be deemed an employee of the organization for purposes of this division while performing such service.

(b) For purposes of this section, "voluntary service without pay" shall include the performance of services by a parent, without remuneration in cash, when rendered to a cooperative parent participation nursery school if such service is required as a condition of participation in the organization.

(c) For purposes of this section, "voluntary service without pay" shall include the performance of services by a person who receives no remuneration other than meals, transportation, lodging, or reimbursement for incidental expenses.

(Amended by Stats. 1979, Ch. 76.)

3364. Notwithstanding subdivision (c) of Section 3352, a volunteer, unsalaried member of a sheriff's reserve in any county who is not deemed an employee of the county under Section 3362.5, shall, upon the adoption of a resolution of the board of supervisors declaring that the member is deemed an employee of the county for the purposes of this division, be entitled to the workers' compensation benefits provided by this division for any injury sustained by him or her while engaged in the performance of any active law enforcement service under the direction and control of the sheriff.

(Amended by Stats. 2006, Ch. 538, Sec. 488. Effective January 1, 2007.)

3364.5. Notwithstanding Section 3351 of the Labor Code, a volunteer, unsalaried person authorized by the governing board of a school district or the county superintendent of schools to perform volunteer services for the school district or the county superintendent shall, upon the adoption of a resolution of the governing board of the school district or the county board of education so declaring, be deemed an employee of the district or the county superintendent for the purposes of this division and shall be entitled to the workmen's compensation benefits provided by this division for any injury sustained by him while engaged in the performance of any service under the direction and control of the governing board of the school district or the county superintendent.

(Amended by Stats. 1968, Ch. 1146.)

3364.55. A ward of the juvenile court engaged in rehabilitative work without pay, under an assignment by order of the juvenile court to a work project on public property within the jurisdiction of any governmental entity, including the federal government, shall, upon the adoption of a resolution of the board of supervisors declaring that such ward is deemed an employee of the county for purposes of this division, be entitled to the workers' compensation benefits provided by this division for injury sustained while in the performance of such assigned work project, provided:

(a) That such ward shall not be entitled to any temporary disability indemnity benefits.

(b) That in determining permanent disability benefits, average weekly earnings shall be taken at the minimum provided therefor in Section 4453.

(Amended by Stats. 1976, Ch. 1347.)

3364.6. Notwithstanding Sections 3351 and 3352, juvenile traffic offenders pursuant to Section 564 of the Welfare and Institutions Code, or juvenile probationers pursuant to subdivision (a) of Section 725 of the Welfare and Institutions Code, engaged in rehabilitative work without pay, under an assignment by order of the juvenile court to a work project on public property within the jurisdiction of any governmental entity, including the federal government, shall, upon the adoption of a resolution of the board of supervisors declaring that such traffic offenders or probationers, or both such groups, shall be deemed employees of the county for purposes of this division, be entitled to the workers' compensation benefits provided by this division for injury sustained while in the performance of such assigned work project, provided:

(a) That such traffic offender or probationer shall not be entitled to any temporary disability indemnity benefits.

(b) That in determining permanent disability benefits, average weekly earnings shall be taken at the minimum provided therefor in Section 4453.

(Added by Stats. 1976, Ch. 428.)

3364.7. Notwithstanding Sections 3351 and 3352, a ward of the juvenile court committed to a regional youth educational facility pursuant to Article 24.5 (commencing with Section 894), engaged in rehabilitative work without pay on public property within the jurisdiction of any governmental entity, including the federal government, shall, upon the adoption of a resolution of the board of supervisors declaring that such wards shall be deemed employees of the county for purposes of this division, be entitled to the workers' compensation benefits provided by this division for injury sustained while in the performance of such public work project, provided:

(a) That the ward shall not be entitled to any disability indemnity benefits.

(b) That in determining permanent disability benefits, average weekly earnings shall be taken at the minimum provided therefor in Section 4453.

(Added by Stats. 1984, Ch. 1455, Sec. 4. Effective September 26, 1984.)

3365. For the purposes of this division:

(a) Except as provided in subdivisions (b) and (c), each person engaged in suppressing a fire pursuant to Section 4153 or 4436 of the Public Resources Code, and each person (other than an independent contractor or an employee of an independent contractor) engaged in suppressing a fire at the request of a public officer or employee charged with the duty of preventing or suppressing fires, is deemed, except when the entity is the United States or an agency thereof, to be an employee of the public entity that he is serving or assisting in the suppression of the fire, and is entitled to receive compensation from such public entity in accordance with the provisions of this division. When the entity being served is the United States or an agency thereof, the State Department of Corrections shall be deemed the employer and the cost of workers' compensation may be considered in fixing the reimbursement paid by the United States for the service of prisoners. A person is engaged in suppressing a fire only during the period he (1) is actually fighting the fire, (2) is being transported to or from the fire, or (3) is engaged in training exercises for fire suppression.

(b) A member of the armed forces of the United States while serving under military command in suppressing a fire is not an employee of a public entity.

(c) Neither a person who contracts to furnish aircraft with pilots to a public entity for fire prevention or suppression service,

nor his employees, shall be deemed to be employees of the public entity; but a person who contracts to furnish aircraft to a public entity for fire prevention or suppression service and to pilot the aircraft himself shall be deemed to be an employee of the public entity.

(Amended by Stats. 1976, Ch. 1347.)

3366. (a) For the purposes of this division, each person engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county, and each person (other than an independent contractor or an employee of an independent contractor) engaged in assisting any peace officer in active law enforcement service at the request of such peace officer, is deemed to be an employee of the public entity that he or she is serving or assisting in the enforcement of the law, and is entitled to receive compensation from the public entity in accordance with the provisions of this division.

(b) Nothing in this section shall be construed to provide workers' compensation benefits to a person who is any of the following:

(1) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(2) A law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.32 of the Penal Code.

(Amended by Stats. 1989, Ch. 594, Sec. 3.)

3367. (a) For purposes of this division any person voluntarily rendering technical assistance to a public entity to prevent a fire, explosion, or other hazardous occurrence, at the request of a duly authorized fire or law enforcement officer of that public entity is deemed an employee of the public entity to whom the technical assistance was rendered, and is entitled to receive compensation benefits in accordance with the provisions of this division. Rendering technical assistance shall include the time that person is traveling to, or returning from, the location of the potentially hazardous condition for which he or she has been requested to volunteer his or her assistance.

(b) Nothing in this section shall be construed to provide workers' compensation benefits to a person who is any of the following:

(1) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

(2) A law enforcement officer who is regularly employed by the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety and who is acting as a peace officer in this state pursuant to subdivision (a) of Section 830.32 of the Penal Code.

(Amended by Stats. 1989, Ch. 594, Sec. 4.)

3368. Notwithstanding any provision of this code or the Education Code to the contrary, the school district, county superintendent of schools, or any school administered by the State Department of Education under whose supervision work experience education, cooperative vocational education, or community classrooms, as defined by regulations adopted by the Superintendent of Public Instruction, or student apprenticeship programs registered by the Division of Apprenticeship Standards for registered student apprentices, are provided, shall be considered the employer under Division 4 (commencing with Section 3200) of persons receiving this training unless the persons during the training are being paid a cash wage or salary by a private employer. However, in the case of students being paid a cash wage or salary by a private employer in supervised work experience education or cooperative vocational education, or in the case of registered student apprentices, the school district, county superintendent of schools, or any school administered by the State Department of Education may elect to provide workers' compensation coverage, unless the person or firm under whom the persons are receiving work experience or occupational training elects to provide workers' compensation coverage. If the school district or other educational agency elects to provide workers' compensation coverage for students being paid a cash wage or salary by a private employer in supervised work experience education or cooperative vocational education, it may only be for a transitional period not to exceed three months. A registered student apprentice is a registered apprentice who is (1) at least 16 years of age, (2) a full-time high school student in the 10th, 11th, or 12th grade, and (3) in an apprenticeship program for registered student apprentices registered with the Division of Apprenticeship Standards. An apprentice, while attending related and supplemental instruction classes, shall be considered to be in the employ of the apprentice's employer and not subject to this section, unless the apprentice is unemployed. Whenever this work experience education, cooperative vocational education, community classroom education, or student apprenticeship program registered by the Division of Apprenticeship Standards for registered student apprentices, is under the supervision of a regional occupational center or program operated by two or more school districts pursuant to Section 52301 of the Education Code, the district of residence of the persons receiving the training shall be deemed the employer for the purposes of this section.

(Amended by Stats. 1998, Ch. 541, Sec. 1. Effective January 1, 1999.)

3369. The inclusion of any person or groups of persons within the coverage of this division shall not cause any such person or group of persons to be within the coverage of any other statute unless any other such statute expressly so provides.

(Added by Stats. 1974, Ch. 966.)

3370. (a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to all of the following conditions:

(1) The inmate was not injured as the result of an assault in which the inmate was the initial aggressor, or as the result of the intentional act of the inmate injuring himself or herself.

(2) The inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.

(3) No benefits shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration. If an inmate who has been released from incarceration, and has been receiving benefits under this section, is reincarcerated in a city or county jail, or state penal or correctional institution, the benefits shall cease immediately upon the inmate's reincarceration and shall not be paid for the duration of the reincarceration.

(4) This section shall not be construed to provide for the payment to an inmate, upon release from incarceration, of

temporary disability benefits which were not paid due to the prohibition of paragraph (2).

(5) In determining temporary and permanent disability indemnity benefits for the inmate, the average weekly earnings shall be taken at not more than the minimum amount set forth in Section 4453.

(6) Where a dispute exists respecting an inmate's rights to the workers' compensation benefits provided herein, the inmate may file an application with the appeals board to resolve the dispute. The application may be filed at any time during the inmate's incarceration.

(7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.

(8) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.

(9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.

(b) The Department of Corrections shall present to each inmate of a state penal or correctional institution, prior to his or her first assignment to work at the institution, a printed statement of his or her rights under this division, and a description of procedures to be followed in filing for benefits under this section. The statement shall be approved by the administrative director and be posted in a conspicuous place at each place where an inmate works.

(c) Notwithstanding any other provision of this division, the Department of Corrections shall have medical control over treatment provided an injured inmate while incarcerated in a state prison, except, that in serious cases, the inmate is entitled, upon request, to the services of a consulting physician.

(d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be applicable to an inmate of a state penal or correctional institution who would otherwise be entitled to receive workers' compensation benefits based on an injury sustained prior to his or her incarceration. However, temporary and permanent disability benefits which, except for this subdivision, would otherwise be payable to an inmate during incarceration based on an injury sustained prior to incarceration shall be paid to the dependents of the inmate. If the inmate has no dependents, the temporary disability benefits which, except for this subdivision, would otherwise be payable during the inmate's incarceration shall be paid to the State Treasury to the credit of the Uninsured Employers Fund, and the permanent disability benefits which would otherwise be payable during the inmate's incarceration shall be held in trust for the inmate by the Department of Corrections during the period of incarceration.

For purposes of this subdivision, "dependents" means the inmate's spouse or children, including an inmate's former spouse due to divorce and the inmate's children from that marriage.

(e) Notwithstanding any other provision of this division, an employee who is an inmate, as defined in subdivision (e) of Section 3351 who is eligible for vocational rehabilitation services as defined in Section 4635 shall only be eligible for direct placement services.

(Amended by Stats. 1994, Ch. 497, Sec. 3. Effective January 1, 1995.)

3371. If the issues are complex or if the inmate applicant requests, the Department of Corrections shall furnish a list of qualified workers' compensation attorneys to permit the inmate applicant to choose an attorney to represent him or her before the appeals board.

(Repealed and added by Stats. 1994, Ch. 497, Sec. 5. Effective January 1, 1995.)

Article 3. Dependents

(Article 3 enacted by Stats. 1937, Ch. 90.)

3501. (a) A child under the age of 18 years, or a child of any age found by any trier of fact, whether contractual, administrative, regulatory, or judicial, to be physically or mentally incapacitated from earning, shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent.

(b) A spouse to whom a deceased employee is married at the time of death shall be conclusively presumed to be wholly dependent for support upon the deceased employee if the surviving spouse earned thirty thousand dollars ($30,000) or less in the twelve months immediately preceding the death.

(Amended by Stats. 2013, Ch. 786, Sec. 1. Effective January 1, 2014.)

3502. In all other cases, questions of entire or partial dependency and questions as to who are dependents and the extent of their dependency shall be determined in accordance with the facts as they exist at the time of the injury of the employee.

(Enacted by Stats. 1937, Ch. 90.)

3503. No person is a dependent of any deceased employee unless in good faith a member of the family or household of the employee, or unless the person bears to the employee the relation of spouse, child, posthumous child, adopted child or stepchild, grandchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, or nephew or niece.

(Amended by Stats. 2016, Ch. 50, Sec. 63. Effective January 1, 2017.)

Article 4. Employee Notice

(Article 4 added by Stats. 1984, Ch. 1141, Sec. 1.)

3550. (a) Every employer subject to the compensation provisions of this division shall post and keep posted in a conspicuous location frequented by employees, and where the notice may be easily read by employees during the hours of the workday, a notice that states the name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment.

(b) Failure to keep any notice required by this section conspicuously posted shall constitute a misdemeanor, and shall be prima facie evidence of noninsurance.

(c) This section shall not apply with respect to the employment of employees as defined in subdivision (d) of Section 3351.

(d) The form and content of the notice required by this section shall be prescribed by the administrative director, after consultation with the Commission on Health and Safety and Workers' Compensation, and shall advise employees that all injuries should be reported to their employer. The notice shall be easily understandable. It shall be posted in both English and

Spanish where there are Spanish-speaking employees. The notice shall include the following information:

(1) How to get emergency medical treatment, if needed.

(2) The kinds of events, injuries, and illnesses covered by workers' compensation.

(3) The injured employee's right to receive medical care.

(4) The rights of the employee to select and change the treating physician pursuant to the provisions of Section 4600.

(5) The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate.

(6) To whom injuries should be reported.

(7) The existence of time limits for the employer to be notified of an occupational injury.

(8) The protections against discrimination provided pursuant to Section 132a.

(9) The Internet Web site address and contact information that employees may use to obtain further information about the workers' compensation claims process and an injured employee's rights and obligations, including the location and telephone number of the nearest information and assistance officer.

(e) Failure of an employer to provide the notice required by this section shall automatically permit the employee to be treated by his or her personal physician with respect to an injury occurring during that failure.

(f) The form and content of the notice required to be posted by this section shall be made available to self-insured employers and insurers by the administrative director. Insurers shall provide this notice to each of their policyholders, with advice concerning the requirements of this section and the penalties for a failure to post this notice.

(Amended by Stats. 2011, Ch. 544, Sec. 2. Effective January 1, 2012.)

3551. (a) Every employer subject to the compensation provisions of this code, except employers of employees defined in subdivision (d) of Section 3351, shall give every new employee, either at the time the employee is hired or by the end of the first pay period, written notice of the information contained in Section 3550. The content of the notice required by this section shall be prescribed by the administrative director after consultation with the Commission on Health and Safety and Workers' Compensation.

(b) The notice required by this section shall be easily understandable and available in both English and Spanish. In addition to the information contained in Section 3550, the content of the notice required by this section shall include:

(1) Generally, how to obtain appropriate medical care for a job injury.

(2) The role and function of the primary treating physician.

(3) A form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician," as defined by Section 4600, or "personal chiropractor," as defined by Section 4601.

(c) The content of the notice required by this section shall be made available to employers and insurers by the administrative director. Insurers shall provide this notice to each of their policyholders, with advice concerning the requirements of this section and the penalties for a failure to provide this notice to all employees.

(Amended by Stats. 2002, Ch. 6, Sec. 45. Effective January 1, 2003.)

3553. Every employer subject to the compensation provisions of this code shall give any employee who is a victim of a crime that occurred at the employee's place of employment written notice that the employee is eligible for workers' compensation for injuries, including psychiatric injuries, that may have resulted from the place of employment crime. The employer shall provide this notice, either personally or by first-class mail, within one working day of the place of employment crime, or within one working day of the date the employer reasonably should have known of the crime.

(Added by Stats. 1997, Ch. 527, Sec. 3. Effective January 1, 1998.)

Chapter 3. Conditions of Compensation Liability

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

3600. (a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence.

(4) Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee. As used in this paragraph, "controlled substance" shall have the same meaning as prescribed in Section 11007 of the Health and Safety Code.

(5) Where the injury is not intentionally self-inflicted.

(6) Where the employee has not willfully and deliberately caused his or her own death.

(7) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

(8) Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted.

(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment. The administrative director shall promulgate reasonable rules and regulations requiring employers to post and keep posted in a conspicuous place or places a notice advising employees of the provisions of this subdivision. Failure of the employer to post the notice shall not constitute an expression of intent to waive the provisions of this subdivision.

(10) Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply:

(A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.

(B) The employee's medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.

(C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff.

For purposes of this paragraph, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district's final decision not to reemploy that person.

A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this paragraph, and this paragraph shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this paragraph inapplicable to the employee.

(b) Where an employee, or his or her dependents, receives the compensation provided by this division and secures a judgment for, or settlement of, civil damages pursuant to those specific exemptions to the employee's exclusive remedy set forth in subdivision (b) of Section 3602 and Section 4558, the compensation paid under this division shall be credited against the judgment or settlement, and the employer shall be relieved from the obligation to pay further compensation to, or on behalf of, the employee or his or her dependents up to the net amount of the judgment or settlement received by the employee or his or her heirs, or that portion of the judgment as has been satisfied.

(c) For purposes of determining whether to grant or deny a workers' compensation claim, if an employee is injured or killed by a third party in the course of the employee's employment, no personal relationship or personal connection shall be deemed to exist between the employee and the third party based only on a determination that the third party injured or killed the employee solely because of the third party's personal beliefs relating to his or her perception of the employee's race, religious creed, color, national origin, age, disability, sex, gender, gender identity, gender expression, or sexual orientation.

(Amended by Stats. 2011, Ch. 719, Sec. 29. Effective January 1, 2012.)

3600.1. (a) Whenever any firefighter of the state, as defined in Section 19886 of the Government Code, is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire-suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of this division that he, she, or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of, and been sustained in, the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to do either of the following:

(1) Require the extension of any benefits to a firefighter who, at the time of his or her injury, death, or disability, is acting for compensation from one other than the state.

(2) Require the extension of any benefits to a firefighter employed by the state where by departmental regulation, whether now in force or hereafter enacted or promulgated, the activity giving rise to the injury, disability, or death is expressly prohibited.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 2005, Ch. 22, Sec. 143. Effective January 1, 2006.)

3600.2. (a) Whenever any peace officer, as defined in Section 50920 of the Government Code, is injured, dies, or is disabled from performing his duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace anywhere in this state, including the local jurisdiction in which he is employed, but is not at the time acting under the immediate direction of his employer, he or his dependents, as the case may be, shall be accorded by his employer all of the same benefits, including the benefits of this division, which he or they would have received had that peace officer been acting under the immediate direction of his employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to:

(1) Require the extension of any benefits to a peace officer who at the time of his injury, death, or disability is acting for compensation from one other than the city, county, city and county, judicial district, or town of his primary employment.

(2) Require the extension of any benefits to a peace officer employed by a city, county, city and county, judicial district, or town which by charter, ordinance, or departmental regulation, whether now in force or hereafter enacted or promulgated, expressly prohibits the activity giving rise to the injury, disability, or death.

(3) Enlarge or extend the authority of any peace officer to make an arrest; provided, however, that illegality of the arrest shall not affect the extension of benefits by reason of this act if the peace officer reasonably believed that the arrest was not illegal.

(Added by Stats. 1980, Ch. 407.)

3600.3. (a) For the purposes of Section 3600, an off-duty peace officer, as defined in subdivision (b), who is performing, within the jurisdiction of his or her employing agency, a service he or she would, in the course of his or her employment, have been required to perform if he or she were on duty, is performing a service growing out of and incidental to his or her employment and is acting within the course of his or her employment if, as a condition of his or her employment, he or she is required to be on call within the jurisdiction during off-duty hours.

(b) As used in subdivision (a), "peace officer" means those employees of the Department of Forestry and Fire Protection named as peace officers for purposes of subdivision (b) of Section 830.37 of the Penal Code.

(c) This section does not apply to any off-duty peace officer while he or she is engaged, either as an employee or as an independent contractor, in any capacity other than as a peace officer.

(Amended by Stats. 1992, Ch. 427, Sec. 122. Effective January 1, 1993.)

3600.4. (a) Whenever any firefighter of a city, county, city and county, district, or other public or municipal corporation or political subdivision, or any firefighter employed by a private entity, is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the local jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of this division which he or she or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

(b) Nothing in this section shall be deemed to:

(1) Require the extension of any benefits to a firefighter who at the time of his or her injury, death, or disability is acting for compensation from one other than the city, county, city and county, district, or other public or municipal corporation or political subdivision, or private entity, of his or her primary employment or enrollment.

(2) Require the extension of any benefits to a firefighter employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, or private entity, which by charter, ordinance, departmental regulation, or private employer policy, whether now in force or hereafter enacted or promulgated, expressly prohibits the activity giving rise to the injury, disability, or death. However, this paragraph shall not apply to relieve the employer from liability for benefits for any injury, disability, or death of a firefighter when the firefighter is acting pursuant to Section 1799.107 of the Health and Safety Code.

(Amended by Stats. 1998, Ch. 617, Sec. 2. Effective January 1, 1999.)

3600.5. (a) If an employee who has been hired or is regularly working in the state receives personal injury by accident arising out of and in the course of employment outside of this state, he or she, or his or her dependents, in the case of his or her death, shall be entitled to compensation according to the law of this state.

(b) (1) An employee who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the employee is temporarily within this state doing work for his or her employer if the employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than California, so as to cover the employee's work while in this state if both of the following apply:

(A) The extraterritorial provisions of this division are recognized in the other state.

(B) The employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation insurance or similar laws of the other state.

(2) In any case in which paragraph (1) is satisfied, the benefits under the workers' compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(c) (1) With respect to an occupational disease or cumulative injury, a professional athlete who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division while the professional athlete is temporarily within this state doing work for his or her employer if both of the following are satisfied:

(A) The employer has furnished workers' compensation insurance coverage or its equivalent under the laws of a state other than California.

(B) The employer's workers' compensation insurance or its equivalent covers the professional athlete's work while in this state.

(2) In any case in which paragraph (1) is satisfied, the benefits under the workers' compensation insurance or similar laws of the other state, and other remedies under those laws, shall be the exclusive remedy against the employer for any occupational disease or cumulative injury, whether resulting in death or not, received by the employee while working for the employer in this state.

(3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete's last day of work for the employer within the state, the professional athlete performs less than 20 percent of his or her duty days in California during that 365-day period in California.

(d) (1) With respect to an occupational disease or cumulative injury, a professional athlete and his or her employer shall be exempt from this division when all of the professional athlete's employers in his or her last year of work as a professional athlete are exempt from this division pursuant to subdivision (c) or any other law, unless both of the following conditions are satisfied:

(A) The professional athlete has, over the course of his or her professional athletic career, worked for two or more seasons for a California-based team or teams, or the professional athlete has, over the course of his or her professional athletic career, worked 20 percent or more of his or her duty days either in California or for a California-based team. The percentage of a professional athletic career worked either within California or for a California-based team shall be determined solely by taking the number of duty days the professional athlete worked for a California-based team or teams, plus the number of duty days the professional athlete worked as a professional athlete in California for any team other than a California-based team, and dividing that number by the total number of duty days the professional athlete was employed anywhere as a professional athlete.

(B) The professional athlete has, over the course of his or her professional athletic career, worked for fewer than seven seasons for any team or teams other than a California-based team or teams as defined in this section.

(2) When subparagraphs (A) and (B) of paragraph (1) are both satisfied, liability for the professional athlete's occupational disease or cumulative injury shall be determined in accordance with Section 5500.5.

(e) An employer of professional athletes, other than a California-based team, shall be exempt from Article 4 (commencing with Section 3550) of Chapter 2, and subdivisions (a) to (c), inclusive, of Section 5401.

(f) For purposes of this section, a certificate from the duly authorized officer of the appeals board or similar department of another state certifying that the employer of the other state is insured in that state and has provided extraterritorial coverage insuring his or her employees while working within this state shall be prima facie evidence that the employer carries workers' compensation insurance.

(g) For purposes of this section, the following definitions apply:

(1) The term "professional athlete" means an athlete who is employed at either a minor or major league level in the sport of baseball, basketball, football, ice hockey, or soccer.

(2) The term "California-based team" means a team that plays a majority of its home games in California.

(3) The term "duty day" means a day in which any services are performed by a professional athlete under the direction and control of his or her employer pursuant to a player contract.

(4) The term "season" means the period from the date of the first preseason team activity for that contract year, through the date of the last game the professional athlete's team played during the same contract year.

(h) The amendments made to this section by the act adding this subdivision apply to all claims for benefits pursuant to this division filed on or after September 15, 2013. The amendments made to this section by the act adding this subdivision shall not constitute good cause to reopen any final decision, order, or award.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Amended by Stats. 2013, Ch. 653, Sec. 1. Effective January 1, 2014.)

3600.6. Disaster service workers registered by a disaster council while performing services under the general direction of the disaster council shall be entitled to all of the same benefits of this division as any other injured employee, except as provided by Chapter 10 (commencing with Section 4351) of Part 1. For purposes of this section, an unregistered person impressed into performing service as a disaster service worker during a state of war emergency, a state of emergency, or a local emergency by a person having authority to command the aid of citizens in the execution of his or her duties shall also be deemed a disaster service worker and shall be entitled to the same benefits of this division as any other disaster service worker.

(Added by Stats. 1986, Ch. 554, Sec. 1.)

3600.8. (a) No employee who voluntarily participates in an alternative commute program that is sponsored or mandated by a governmental entity shall be considered to be acting within the course of his or her employment while utilizing that program to travel to or from his or her place of employment, unless he or she is paid a regular wage or salary in compensation for those periods of travel. An employee who is injured while acting outside the course of his or her employment, or his or her dependents in the event of the employee's death, shall not be barred from bringing an action at law for damages against his or her employer as a result of this section.

(b) Any alternative commute program provided, sponsored, or subsidized by an employee's employer in order to comply with any trip reduction mandates of an air quality management district or local government shall be considered a program mandated by a governmental entity. An employer's reimbursement of employee expenses or subsidization of costs related to an alternative commute program shall not be considered payment of a wage or salary in compensation for the period of travel. If an employer's salary is not based on the hours the employee works, payment of his or her salary shall not be considered to be in compensation for the period of travel unless there is a specific written agreement between the employer and the employee to that effect. If an employer elects to provide workers' compensation coverage for those employees who are passengers in a vehicle owned and operated by the employer or an agent thereof, those employees shall be considered to be within the course of their employment, provided the employer notifies employees in writing prior to participation of the employee or coverage becoming effective.

(c) As used in this section, "governmental entity" means a regional air district, air quality management district, congestion management agency, or other local jurisdiction having authority to enact air pollution or congestion management controls or impose them upon entities within its jurisdiction.

(d) Notwithstanding any other provision of law, vanpool programs may continue to provide workers' compensation benefits to employees who participate in an alternative commute program by riding in a vanpool, in the case in which the vanpool vehicle is owned or registered to the employer.

(e) Employees of the state who participate in an alternative commute program, while riding in a vanpool vehicle that is registered to or owned by the state, shall be deemed to be within the course and scope of employment for workers' compensation purposes only.

(Added by Stats. 1994, Ch. 622, Sec. 1. Effective January 1, 1995.)

3601. (a) Where the conditions of compensation set forth in Section 3600 concur, the right to recover such compensation, pursuant to the provisions of this division is, except as specifically provided in this section, the exclusive remedy for injury or death of an employee against any other employee of the employer acting within the scope of his or her employment, except that an employee, or his or her dependents in the event of his or her death, shall, in addition to the right to compensation against the employer, have a right to bring an action at law for damages against the other employee, as if this division did not apply, in either of the following cases:

(1) When the injury or death is proximately caused by the willful and unprovoked physical act of aggression of the other employee.

(2) When the injury or death is proximately caused by the intoxication of the other employee.

(b) In no event, either by legal action or by agreement whether entered into by the other employee or on his or her behalf, shall the employer be held liable, directly or indirectly, for damages awarded against, or for a liability incurred by the other employee under paragraph (1) or (2) of subdivision (a).

(c) No employee shall be held liable, directly or indirectly, to his or her employer, for injury or death of a coemployee except where the injured employee or his or her dependents obtain a recovery under subdivision (a).

(Amended by Stats. 1982, Ch. 922, Sec. 5.)

3602. (a) Where the conditions of compensation set forth in Section 3600 concur, the right to recover compensation is, except as specifically provided in this section and Sections 3706 and 4558, the sole and exclusive remedy of the employee or his or her dependents against the employer. The fact that either the employee or the employer also occupied another or dual capacity prior to, or at the time of, the employee's industrial injury shall

not permit the employee or his or her dependents to bring an action at law for damages against the employer.

(b) An employee, or his or her dependents in the event of his or her death, may bring an action at law for damages against the employer, as if this division did not apply, in the following instances:

(1) Where the employee's injury or death is proximately caused by a willful physical assault by the employer.

(2) Where the employee's injury is aggravated by the employer's fraudulent concealment of the existence of the injury and its connection with the employment, in which case the employer's liability shall be limited to those damages proximately caused by the aggravation. The burden of proof respecting apportionment of damages between the injury and any subsequent aggravation thereof is upon the employer.

(3) Where the employee's injury or death is proximately caused by a defective product manufactured by the employer and sold, leased, or otherwise transferred for valuable consideration to an independent third person, and that product is thereafter provided for the employee's use by a third person.

(c) In all cases where the conditions of compensation set forth in Section 3600 do not concur, the liability of the employer shall be the same as if this division had not been enacted.

(d) (1) For the purposes of this division, including Sections 3700 and 3706, an employer may secure the payment of compensation on employees provided to it by agreement by another employer by entering into a valid and enforceable agreement with that other employer under which the other employer agrees to obtain, and has, in fact, obtained workers' compensation coverage for those employees. In those cases, both employers shall be considered to have secured the payment of compensation within the meaning of this section and Sections 3700 and 3706 if there is a valid and enforceable agreement between the employers to obtain that coverage, and that coverage, as specified in subdivision (a) or (b) of Section 3700, has been in fact obtained, and the coverage remains in effect for the duration of the employment providing legally sufficient coverage to the employee or employees who form the subject matter of the coverage. That agreement shall not be made for the purpose of avoiding an employer's appropriate experience rating as defined in subdivision (c) of Section 11730 of the Insurance Code.

(2) Employers who have complied with this subdivision shall not be subject to civil, criminal, or other penalties for failure to provide workers' compensation coverage or tort liability in the event of employee injury, but may, in the absence of compliance, be subject to all three.

(e) As provided in paragraph (12) of subdivision (f) of Section 1202.4 of the Penal Code, in cases where an employer is convicted of a crime against an employee, a payment to the employee or the employee's dependent that is paid by the employer's workers' compensation insurance carrier shall not be used to offset the amount of the restitution order unless the court finds that the defendant substantially met the obligation to pay premiums for that insurance coverage.

(Amended by Stats. 2012, Ch. 868, Sec. 1. Effective January 1, 2013.)

3603. Payment of compensation in accordance with the order and direction of the appeals board shall discharge the employer from all claims therefor.

(Amended by Stats. 1971, Ch. 438.)

3604. It is not a defense to the State, any county, city, district or institution thereof, or any public or quasi-public corporation, that a person injured while rendering service for it was not lawfully employed by reason of the violation of any civil service or other law or regulation respecting the hiring of employees.

(Enacted by Stats. 1937, Ch. 90.)

3605. The compensation due an injured minor may be paid to him until his parent or guardian gives the employer or the latter's compensation insurance carrier written notice that he claims such compensation.

Compensation paid to such injured minor prior to receipt of such written notice is in full release of the employer and insurance carrier for the amount so paid. The minor can not disaffirm such payment upon appointment of a guardian or coming of age.

(Added by Stats. 1939, Ch. 648.)

Chapter 4. Compensation Insurance and Security

(Chapter 4 enacted by Stats. 1937, Ch. 90.)

Article 1. Insurance and Security

(Article 1 enacted by Stats. 1937, Ch. 90.)

3700. Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

For purposes of this section, "state" shall include the superior courts of California.

(Amended by Stats. 2002, Ch. 905, Sec. 10. Effective January 1, 2003.)

3700.1. As used in this article:

(a) "Director" means the Director of Industrial Relations.

(b) "Private self-insurer" means a private employer which has secured the payment of compensation pursuant to Section 3701.

(c) "Trustees" means the Board of Trustees of the Self-Insurers' Security Fund.

(d) "Member" means a private self-insurer which participates in the Self-Insurers' Security Fund.

(e) "Incurred liabilities for the payment of compensation" means the sum of an estimate of future compensation, as compensation is defined by Section 3207, plus an estimate of

the amount necessary to provide for the administration of claims, including legal costs.

(Amended by Stats. 2012, Ch. 363, Sec. 10. Effective January 1, 2013.)

3700.5. (a) The failure to secure the payment of compensation as required by this article by one who knew, or because of his or her knowledge or experience should be reasonably expected to have known, of the obligation to secure the payment of compensation, is a misdemeanor punishable by imprisonment in the county jail for up to one year, or by a fine of up to double the amount of premium, as determined by the court, that would otherwise have been due to secure the payment of compensation during the time compensation was not secured, but not less than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(b) A second or subsequent conviction shall be punished by imprisonment in the county jail for a period not to exceed one year, by a fine of triple the amount of premium, or by both that imprisonment and fine, as determined by the court, that would otherwise have been due to secure the payment of compensation during the time payment was not secured, but not less than fifty thousand dollars ($50,000).

(c) Upon a first conviction of a person under this section, the person may be charged the costs of investigation at the discretion of the court. Upon a subsequent conviction, the person shall be charged the costs of investigation in addition to any other penalties pursuant to subdivision (b). The costs of investigation shall be paid only after the payment of any benefits that may be owed to injured workers, any reimbursement that may be owed to the director for benefits provided to the injured worker pursuant to Section 3717, and any other penalty assessments that may be owed.

(Amended by Stats. 2004, 4th Ex. Sess., Ch. 2, Sec. 3. Effective March 6, 2005.)

3701. (a) Each year every private self-insuring employer shall secure incurred liabilities for the payment of compensation and the performance of the obligations of employers imposed under this chapter by renewing the prior year's security deposit or by making a new deposit of security. If a new deposit is made, it shall be posted within 60 days of the filing of the self-insured employer's annual report with the director, but in no event later than May 1.

(b) The solvency risk and security deposit amount for each private and group self-insurer shall be acceptable to the Self-Insurers' Security Fund.

(c) Unless otherwise permitted by regulation, the deposit shall be an amount equal to the self-insurer's projected losses, net of specific excess insurance coverage, if any, and inclusive of incurred but not reported (IBNR) liabilities, allocated loss adjustment expense, and unallocated loss adjustment expense, calculated as of December 31 of each year. The calculation of projected losses and expenses shall be reflected in a written actuarial report that projects ultimate liabilities of the private self-insured employer at the expected actuarial confidence level, to ensure that all claims and associated costs are recognized. The written actuarial report shall be prepared by an actuary meeting the qualifications prescribed by the director in regulation.

(d) In determining the amount of the deposit required to secure incurred liabilities for the payment of compensation and the performance of obligations of a self-insured employer imposed under this chapter, the director shall offset estimated future liabilities for the same claims covered by a self-insured plan under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), but in no event shall the offset exceed the estimated future liabilities for the claims under this chapter.

(e) The director may only accept as security, and the employer shall deposit as security, cash, securities, surety bonds, or irrevocable letters of credit in any combination the director, in his or her discretion, deems adequate security. The current deposit shall include any amounts covered by terminated surety bonds or excess insurance policies, as shall be set forth in regulations adopted by the director pursuant to Section 3702.10.

(f) Surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited with, and be in a form approved by, the director, shall be exonerated only according to its terms and, in no event, by the posting of additional security.

(g) The director may accept as security a joint security deposit that secures an employer's obligation under this chapter and that also secures that employer's obligations under the federal Longshore and Harbor Workers' Compensation Act.

(h) The liability of the Self-Insurers' Security Fund, with respect to any claims brought under both this chapter and under the federal Longshore and Harbor Workers' Compensation Act, to pay for shortfalls in a security deposit shall be limited to the amount of claim liability owing the employee under this chapter offset by the amount of any claim liability owing under the federal Longshore and Harbor Workers' Compensation Act, but in no event shall the liability of the fund exceed the claim liability under this chapter. The employee shall be entitled to pursue recovery under either or both the state and federal programs.

(i) Securities shall be deposited on behalf of the director by the self-insured employer with the Treasurer. Securities shall be accepted by the Treasurer for deposit and shall be withdrawn only upon written order of the director.

(j) Cash shall be deposited in a financial institution approved by the director, and in the account assigned to the director. Cash shall be withdrawn only upon written order of the director.

(k) Upon the sending by the director of a request to renew, request to post, or request to increase or decrease a security deposit, a perfected security interest is created in the private self-insured's assets in favor of the director and the Self-Insurers' Security Fund to the extent of any then unsecured portion of the self-insured's incurred liabilities. That perfected security interest is transferred to any cash or securities thereafter posted by the private self-insured with the director and is released only upon either of the following:

(1) The acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation.

(2) The return of cash or securities by the director.

The private self-insured employer loses all right, title, and interest in, and any right to control, all assets or obligations posted or left on deposit as security. The director may liquidate the deposit as provided in Section 3701.5 and apply it to the self-insured employer's incurred liabilities either directly or through the Self-Insurers' Security Fund.

(Amended by Stats. 2012, Ch. 363, Sec. 11. Effective January 1, 2013.)

3701.3. The director shall return to a private self-insured employer all individual security determined, with the consent of the Self-Insurers' Security Fund, to be in excess of that needed to ensure the administration of the employer's self insuring, including legal fees, and the payment of any future claims. This section shall not apply to any security posted as part of the

composite deposit, or to any security turned over to the Self-Insurers' Security Fund following an order of default under Section 3701.5.

(Amended by Stats. 2012, Ch. 363, Sec. 12. Effective January 1, 2013.)

3701.5. (a) If the director determines that a private self-insured employer has failed to pay workers' compensation as required by this division, the security deposit shall be utilized to administer and pay the employer's compensation obligations.

(b) If the director determines the security deposit has not been immediately made available for the payment of compensation, the director shall determine the method of payment and claims administration as appropriate, which may include, but is not limited to, payment by a surety that issued the bond, or payment by an issuer of an irrevocable letter of credit, and administration by a surety or by an adjusting agency, or through the Self-Insurers' Security Fund, or any combination thereof. If the director arranges for administration and payment by any person other than the Self-Insurers' Security Fund after a default is declared, the fund shall have no responsibility for claims administration or payment of the claims.

(c) If the director determines the payment of benefits and claims administration shall be made through the Self-Insurers' Security Fund, the fund shall commence payment of the private self-insured employer's obligations for which it is liable under Section 3743 within 30 days of notification. Payments shall be made to claimants whose entitlement to benefits can be ascertained by the fund, with or without proceedings before the appeals board. Upon the assumption of obligations by the fund pursuant to the director's determination, the fund shall have a right to immediate possession of any posted security and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security to the fund together with the interest that has accrued since the date of the self-insured employer's default or insolvency.

(d) The payment of benefits by the Self-Insurers' Security Fund from security deposit proceeds shall release and discharge any custodian of the security deposit, surety, any issuer of a letter of credit, and the self-insured employer, from liability to fulfill obligations to provide those same benefits as compensation, but does not release any person from any liability to the fund for full reimbursement. Payment by a surety constitutes a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or his or her estate. Full reimbursement includes necessary attorney fees and other costs and expenses, without prior claim or proceedings on the part of the injured employee or other beneficiaries. Any decision or determination made, or any settlement approved, by the director or by the appeals board under subdivision (f) shall conclusively be presumed valid and binding as to any and all known claims arising out of the underlying dispute, unless an appeal is made within the time limit specified in Section 5950.

(e) The director shall advise the Self-Insurers' Security Fund promptly after receipt of information indicating that a private self-insured employer may be unable to meet its compensation obligations. The director shall also advise the Self-Insurers' Security Fund of all determinations and directives made or issued pursuant to this section. All financial, actuarial, or claims information received by the director from any self-insurer may be shared by the director with the Self-Insurers' Security Fund.

(f) Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the security deposit, or any liability arising out of the posting or failure to post security, or adequacy of the security or reasonableness of administrative costs, including legal fees, and arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, a self-insured employer, or the Self-Insurers' Security Fund shall be resolved by the director. An appeal from the director's decision or determination may be taken to the appropriate superior court by petition for writ of mandate. Payment of claims from the security deposit or by the Self-Insurers' Security Fund shall not be stayed pending the resolution of the disputes unless and until the superior court issues a determination staying a payment of claims decision or determination of the director.

(Amended by Stats. 2012, Ch. 363, Sec. 13. Effective January 1, 2013.)

3701.7. Where any employer requesting coverage under a new or existing certificate of consent to self-insure has had a period of unlawful uninsurance, either for an applicant in its entirety or for a subsidiary or member of a joint powers authority legally responsible for its own workers' compensation obligations, the following special conditions shall apply before the director may determine if the requesting employer can operate under a certificate of consent to self-insure:

(a) The director may require a deposit of not less than 200 percent of the outstanding liabilities remaining unpaid at the time of application, which had been incurred during the uninsurance period.

(b) At the discretion of the director, where a public or private employer has been previously totally uninsured for workers' compensation pursuant to Section 3700, the director may require an additional deposit not to exceed 100 percent of the total outstanding liabilities for the uninsured period, or the sum of two hundred fifty thousand dollars ($250,000), whichever is greater.

(c) In addition to the deposits required by subdivisions (a) and (b), a penalty shall be paid to the Uninsured Employers Fund of 10 percent per year of the remaining unpaid liabilities, for every year liabilities remain outstanding. In addition, an additional application fee, not to exceed one thousand dollars ($1,000), plus assessments, pursuant to Section 3702.5 and subdivision (b) of Section 3745, may be imposed by the director and the Self-Insurers' Security Fund, respectively, against private self-insured employers.

(d) A certificate of consent to self-insure shall not be granted to an applicant that has had a period of unlawful uninsurance without the written approval of the Self-Insurers' Security Fund.

(e) An employer may retrospectively insure the outstanding liabilities arising out of the uninsured period, either before or after an application for self-insurance has been approved. Upon proof of insurance acceptable to the director, no deposit shall be required for the period of uninsurance.

The penalties to be paid to the Uninsured Employers Fund shall consist of a one-time payment of 20 percent of the outstanding liabilities for the period of uninsurance remaining unpaid at the time of application, in lieu of any other penalty for being unlawfully uninsured pursuant to this code.

(f) In the case of a subsidiary which meets all of the following conditions, a certificate shall issue without penalty:

(1) The subsidiary has never had a certificate revoked for reasons set forth in Section 3702.

(2) Employee injuries were reported to the Office of Self-Insurance Plans in annual reports.

(3) The security deposit of the certificate holder was calculated to include the entity's compensation liabilities.

(4) Application for a separate certificate or corrected certificate is made within 90 days and completed within 180 days of notice from the Office of Self-Insurance Plans. If the requirements of this subdivision are not met, all penalties pursuant to subdivision (b) of Section 3702.9 shall apply.

(g) The director may approve an application on the date the application is substantially completed, subject to completion requirements, and may make the certificate effective on an earlier date, covering a period of uninsurance, if the employer complies with the requirements of this section.

(h) Any decision by the director may be contested by an entity in the manner provided in Section 3701.5.

(i) Nothing in this section shall abrogate the right of an employee to bring an action against an uninsured employer pursuant to Section 3706.

(j) Nothing in this statute shall abrogate the right of a self-insured employer to insure against known or unknown claims arising out of the self-insurance period.

(Amended by Stats. 2012, Ch. 363, Sec. 14. Effective January 1, 2013.)

3701.8. (a) As an alternative to each private self-insuring employer securing its own incurred liabilities as provided in Section 3701, the director may provide by regulation for an alternative security system whereby all private self-insureds designated for full participation by the director shall collectively secure their aggregate incurred liabilities through the Self-Insurers' Security Fund. The regulations shall provide for the director to set a total security requirement for these participating self-insured employers based on a review of their annual reports and any other self-insurer information as may be specified by the director. The Self-Insurers' Security Fund shall propose to the director a combination of cash and securities, surety bonds, irrevocable letters of credit, insurance, or other financial instruments or guarantees satisfactory to the director sufficient to meet the security requirement set by the director. Upon approval by the director and posting by the Self-Insurers' Security Fund on or before the date set by the director, that combination shall be the composite deposit. The noncash elements of the composite deposit may be one-year or multiple-year instruments. If the Self-Insurers' Security Fund fails to post the required composite deposit by the date set by the director, then within 30 days after that date, each private self-insuring employer shall secure its incurred liabilities in the manner required by Section 3701. Self-insured employers not designated for full participation by the director shall meet all requirements as may be set by the director pursuant to subdivision (g).

(b) In order to provide for the composite deposit approved by the director, the Self-Insurers' Security Fund shall assess, in a manner approved by the director, each fully participating private self-insuring employer a deposit assessment payable within 30 days of assessment. The amount of the deposit assessment charged each fully participating self-insured employer shall be set by the Self-Insurers' Security Fund, based on its reasonable consideration of all the following factors:

(1) The total amount needed to provide the composite deposit.

(2) The self-insuring employer's paid or incurred liabilities as reflected in its annual report.

(3) The financial strength and creditworthiness of the self-insured.

(4) Any other reasonable factors as may be authorized by regulation.

(5) In order to make a composite deposit proposal to the director and set the deposit assessment to be charged each fully participating self-insured, the Self-Insurers' Security Fund shall have access to the annual reports and other information submitted by all self-insuring employers to the director, under terms and conditions as may be set by the director, to preserve the confidentiality of the self-insured's financial information.

(c) Upon payment of the deposit assessment and except as provided herein, the self-insuring employer loses all right, title, and interest in the deposit assessment. To the extent that in any one year the deposit assessment paid by self-insurers is not exhausted in the purchase of securities, surety bonds, irrevocable letters of credit, insurance, or other financial instruments to post with the director as part of the composite deposit, the surplus shall remain posted with the director, and the principal and interest earned on that surplus shall remain as part of the composite deposit in subsequent years. In the event that in any one year the Self-Insurers' Security Fund fails to post the required composite deposit by the date set the by the director, and the director requires each private self-insuring employer to secure its incurred liabilities in the manner required by Section 3701, then any deposit assessment paid in that year shall be refunded to the self-insuring employer that paid the deposit assessment.

(d) If any private self-insuring employer objects to the calculation, posting, or any other aspect of its deposit assessment, upon payment of the assessment in the time provided, the employer shall have the right to appeal the assessment to the director, who shall have exclusive jurisdiction over this dispute. If any private self-insuring employer fails to pay the deposit assessment in the time provided, the director shall order the self-insuring employer to pay a penalty of not less than 10 percent of its deposit assessment, plus interest on any unpaid amount at the prejudgment rate, and to post a separate security deposit in the manner provided by Section 3701. The penalty and interest shall be paid directly to the Self-Insurers' Security Fund. The director may also revoke the certificate of consent to self-insure of any self-insuring employer who fails to pay the deposit assessment in the time provided.

(e) Upon the posting by the Self-Insurers' Security Fund of the composite deposit with the director, the deposit shall be held until the director determines that a private self-insured employer has failed to pay workers' compensation as required by this division, and the director orders the Self-Insurers' Security Fund to commence payment. Upon ordering the Self-Insurers' Security Fund to commence payment, the director shall make available to the fund that portion of the composite deposit necessary to pay the workers' compensation benefits of the defaulting self-insuring employer. In the event additional funds are needed in subsequent years to pay the workers' compensation benefits of any self-insuring employer who defaulted in earlier years, the director shall make available to the Self-Insurers' Security Fund any portions of the composite deposit as may be needed to pay those benefits. In making the deposit available to the Self-Insurers' Security Fund, the director shall also allow any amounts as may be reasonably necessary to pay for the administrative and other activities of the fund.

(f) The cash portion of the composite deposit shall be segregated from all other funds held by the director, and shall be invested by the director for the sole benefit of the Self-Insurers' Security Fund and the injured workers of private self-insured employers, and may not be used for any other purpose by the state. Alternatively, the director, in his discretion, may allow the

Self-Insurers' Security Fund to hold, invest, and draw upon the cash portion of the composite deposit as prescribed by regulation.

(g) Notwithstanding any other provision of this section, the director shall, by regulation, set minimum credit, financial, or other conditions that a private self-insured must meet in order to be a fully participating self-insurer in the alternative security system. In the event any private self-insuring employer is unable to meet the conditions set by the director, or upon application of the Self-Insurers' Security Fund to exclude an employer for credit or financial reasons, the director shall exclude the self-insuring employer from full participation in the alternative security system. In the event a self-insuring employer is excluded from full participation, the nonfully participating private self-insuring employer shall post a separate security deposit in the manner provided by Section 3701 and pay a deposit assessment set by the director. Alternatively, the director may order that the nonfully participating private self-insuring employer post a separate security deposit to secure a portion of its incurred liabilities and pay a deposit assessment set by the director.

(h) An employer who self-insures through group self-insurance and an employer whose certificate to self-insure has been revoked may fully participate in the alternative security system if both the director and the Self-Insurers' Security Fund approve the participation of the self-insurer. If not approved for full participation, or if an employer is issued a certificate to self-insure after the composite deposit is posted, the employer shall satisfy the requirements of subdivision (g) for nonfully participating private self-insurers.

(i) At all times, a self-insured employer shall have secured its incurred workers' compensation liabilities either in the manner required by Section 3701 or through the alternative security system, and there shall not be any lapse in the security.

(Amended by Stats. 2012, Ch. 363, Sec. 15. Effective January 1, 2013.)

3701.9. (a) A certificate of consent to self-insure shall not be issued after January 1, 2013, to any of the following:

(1) A professional employer organization.

(2) A leasing employer, as defined in Section 606.5 of the Unemployment Insurance Code.

(3) A temporary services employer, as defined in Section 606.5 of the Unemployment Insurance Code.

(4) Any employer, regardless of name or form of organization, which the director determines to be in the business of providing employees to other employers.

(b) A certificate of consent to self-insure that has been issued to any employer described in subdivision (a) shall be revoked by the director not later than January 1, 2015.

(Added by Stats. 2012, Ch. 363, Sec. 16. Effective January 1, 2013.)

3702. (a) A certificate of consent to self-insure may be revoked by the director at any time for good cause after a hearing. Good cause includes, among other things, a recommendation by the Self-Insurers' Security Fund to revoke the certificate of consent, the impairment of the solvency of the employer to the extent that there is a marked reduction of the employer's financial strength, failure to maintain a security deposit as required by Section 3701, failure to pay assessments of the Self-Insurers' Security Fund, frequent or flagrant violations of state safety and health orders, the failure or inability of the employer to fulfill his or her obligations, or any of the following practices by the employer or his or her agent in charge of the administration of obligations under this division:

(1) Habitually and as a matter of practice and custom inducing claimants for compensation to accept less than the compensation due or making it necessary for them to resort to proceedings against the employer to secure compensation due.

(2) Where liability for temporary disability indemnity is not in dispute, intentionally failing to pay temporary disability indemnity without good cause in order to influence the amount of permanent disability benefits due.

(3) Intentionally refusing to comply with known and legally indisputable compensation obligations.

(4) Discharging or administering his or her compensation obligations in a dishonest manner.

(5) Discharging or administering his or her compensation obligations in such a manner as to cause injury to the public or those dealing with the employer.

(b) Where revocation is in part based upon the director's finding of a marked reduction of the employer's financial strength or the failure or inability of the employer to fulfill his or her obligations, or a practice of discharging obligations in a dishonest manner, it is a condition precedent to the employer's challenge or appeal of the revocation that the employer have in effect insurance against liability to pay compensation.

(c) The director may hold a hearing to determine whether good cause exists to revoke an employer's certificate of consent to self-insure if the employer is cited for a willful, or repeat serious violation of the standard adopted pursuant to Section 6401.7 and the citation has become final.

(Amended by Stats. 2012, Ch. 363, Sec. 17. Effective January 1, 2013.)

3702.1. (a) No person, firm, or corporation, other than an insurer admitted to transact workers' compensation insurance in this state, shall contract to administer claims of self-insured employers as a third-party administrator unless in possession of a certificate of consent to administer self-insured employers' workers' compensation claims.

(b) As a condition of receiving a certificate of consent, all persons given discretion by a third-party administrator to deny, accept, or negotiate a workers' compensation claim shall demonstrate their competency to the director by written examination, or other methods approved by the director.

(c) A separate certificate shall be required for each adjusting location operated by a third-party administrator. A third-party administrator holding a certificate of consent shall be subject to regulation only under this division with respect to the adjustment, administration, and management of workers' compensation claims for any self-insured employer.

(d) A third-party administrator retained by a self-insured employer to administer the employer's workers' compensation claims shall estimate the total accrued liability of the employer for the payment of compensation for the employer's annual report to the director and shall make the estimate both in good faith and with the exercise of a reasonable degree of care. The use of a third-party administrator shall not, however, discharge or alter the employer's responsibilities with respect to the report.

(Amended by Stats. 2009, Ch. 140, Sec. 137. Effective January 1, 2010.)

3702.2. (a) All self-insured employers shall file a self-insurer's annual report in a form prescribed by the director. Public self-insured employers shall provide detailed information as the director determines necessary to evaluate the costs of administration, workers' compensation benefit expenditures, and solvency and performance of the public self-insured employer workers' compensation programs, on a schedule established by the director. The director may grant deferrals to public self-insured employers that are not yet capable of accurately reporting

the information required, giving priority to bringing larger programs into compliance with the more detailed reporting.

(b) To enable the director to determine the amount of the security deposit required by subdivision (c) of Section 3701, the annual report of a self-insured employer who has self-insured both state and federal workers' compensation liability shall also set forth (1) the amount of all compensation liability incurred, paid-to-date, and estimated future liability under both this chapter and under the federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), and (2) the identity and the amount of the security deposit securing the employer's liability under state and federal self-insured programs.

(c) The director shall annually prepare an aggregated summary of all self-insured employer liability to pay compensation reported on the self-insurers' employers annual reports, including a separate summary for public and private employer self-insurers. The summaries shall be in the same format as the individual self-insured employers are required to report that liability on the employer self-insurer's annual report forms prescribed by the director. The aggregated summaries shall be made available to the public on the self-insurance section of the department's Internet Web site. Nothing in this subdivision shall authorize the director to release or make available information that is aggregated by industry or business type, that identifies individual self-insured filers, or that includes any individually identifiable claimant information.

(d) The director may release a copy, or make available an electronic version, of the data contained in any public sector employer self-insurer's annual reports received from an individual public entity self-insurer or from a joint powers authority employer and its membership. However, the release of any annual report information by the director shall not include any portion of any listing of open indemnity claims that contains individually identifiable claimant information, or any portion of excess insurance coverage information that contains any individually identifiable claimant information.

(Amended by Stats. 2012, Ch. 363, Sec. 18. Effective January 1, 2013.)

3702.3. Failure to submit reports or information as deemed necessary by the director to implement the purposes of Section 3701, 3702, or 3702.2 may result in the assessment of a civil penalty as set forth in subdivision (a) of Section 3702.9. Moneys collected shall be used for the administration of self-insurance plans.

(Amended by Stats. 1992, Ch. 532, Sec. 1. Effective January 1, 1993.)

3702.5. (a) (1) The cost of administration of the public self-insured program by the Director of Industrial Relations shall be borne by the Workers' Compensation Administration Revolving Fund.

(2) The cost of administration of the private self-insured program by the Director of Industrial Relations shall be borne by the private self-insurers through payment of certificate fees which shall be established by the director in broad ranges based on the comparative numbers of employees insured by the private self-insurers and the number of adjusting locations. The director may assess other fees as necessary to cover the costs of special audits or services rendered to private self-insured employers. The director may assess a civil penalty for late filing as set forth in subdivision (a) of Section 3702.9.

(b) All revenues from fees and penalties paid by private self-insured employers shall be deposited into the Self-Insurance Plans Fund, which is hereby created for the administration of the private self-insurance program. Any unencumbered balance in subdivision (a) of Item 8350-001-001 of the Budget Act of 1983 shall be transferred to the Self-Insurance Plans Fund. The director shall annually eliminate any unused surplus in the Self-Insurance Plans Fund by reducing certificate fee assessments by an appropriate amount in the subsequent year. Moneys paid into the Self-Insurance Plans Fund for administration of the private self-insured program shall not be used by any other department or agency or for any purpose other than administration of the private self-insurance program. Detailed accountability shall be maintained by the director for any security deposit or other funds held in trust for the Self-Insurer's Security Fund in the Self-Insurance Plans Fund.

Moneys held by the director shall be invested in the Surplus Money Investment Fund. Interest shall be paid on all moneys transferred to the General Fund in accordance with Section 16310 of the Government Code. The Treasurer's and Controller's administrative costs may be charged to the interest earnings upon approval of the director.

(Amended by Stats. 2012, Ch. 363, Sec. 20. Effective January 1, 2013.)

3702.6. (a) The director shall establish an audit program addressing the adequacy of estimates of future liability of claims for all private self-insured employers, and shall ensure that all private self-insured employers are audited within a three-year cycle by the Office of Self Insurance Plans.

(b) Each public self-insurer shall advise its governing board within 90 days after submission of the self-insurer's annual report of the total liabilities reported and whether current funding of those workers' compensation liabilities is in compliance with the requirements of Government Accounting Standards Board Publication No. 10.

(c) The director shall, upon a showing of good cause, order a special audit of any public self-insured employer to determine the adequacy of estimates of future liability of claims.

(d) For purposes of this section, "good cause" means that there exists circumstances sufficient to raise concerns regarding the adequacy of estimates of future liability of claims to justify a special audit.

(Amended by Stats. 1992, Ch. 532, Sec. 3. Effective January 1, 1993.)

3702.7. A certificate of consent to administer claims of self-insured employers may be revoked by the director at any time for good cause after a hearing. Good cause includes, but is not limited to, the violation of subsection (1), (2), (3), (4), or (5) of subdivision (a) of Section 3702. In lieu of revocation of a certificate of consent, the director may impose a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) for each violation.

(Added by Stats. 1984, Ch. 1521, Sec. 4. Operative July 1, 1985, by Sec. 5 of Ch. 1521.)

3702.8. (a) Employers who have ceased to be self-insured employers shall discharge their continuing obligations to secure the payment of workers' compensation that accrued during the period of self-insurance, for purposes of Sections 3700, 3700.5, 3706, and 3715, and shall comply with all of the following obligations of current certificate holders:

(1) Filing annual reports as deemed necessary by the director to carry out the requirements of this chapter.

(2) In the case of a private employer, depositing and maintaining a security deposit for accrued liability for the payment of any workers' compensation that may become due, pursuant to subdivision (b) of Section 3700 and Section 3701, except as provided in subdivision (c).

(3) Paying within 30 days all assessments of which notice is sent, pursuant to subdivision (b) of Section 3745, within 36 months from the last day the employer's certificate of self-insurance was in effect. Assessments shall be based on the benefits paid by the employer during the last full calendar year of self-insurance on claims incurred during that year.

(b) In addition to proceedings to establish liabilities and penalties otherwise provided, a failure to comply may be the subject of a proceeding before the director. An appeal from the director's determination shall be taken to the appropriate superior court by petition for writ of mandate.

(c) Notwithstanding subdivision (a), any employer who is currently self-insured or who has ceased to be self-insured may purchase a special excess workers' compensation policy to discharge any or all of the employer's continuing obligations as a self-insurer to pay compensation or to secure the payment of compensation.

(1) The special excess workers' compensation insurance policy shall be issued by an insurer authorized to transact workers' compensation insurance in this state.

(2) Each carrier's special excess workers' compensation policy shall be approved as to form and substance by the Insurance Commissioner, and rates for special excess workers' compensation insurance shall be subject to the filing requirements set forth in Section 11735 of the Insurance Code.

(3) Each special excess workers' compensation insurance policy shall be submitted by the employer to the director. The director shall adopt and publish minimum insurer financial rating standards for companies issuing special excess workers' compensation policies.

(4) Upon acceptance by the director, a special excess workers' compensation policy shall provide coverage for all or any portion of the purchasing employer's claims for compensation arising out of injuries occurring during the period the employer was self-insured in accordance with Sections 3755, 3756, and 3757 of the Labor Code and Sections 11651 and 11654 of the Insurance Code. The director's acceptance shall discharge the Self-Insurer's Security Fund, without recourse or liability to the Self-Insurer's Security Fund, of any continuing liability for the claims covered by the special excess workers' compensation insurance policy.

(5) For public employers, no security deposit or financial guarantee bond or other security shall be required. The director shall set minimum financial rating standards for insurers issuing special excess workers' compensation policies for public employers.

(d) (1) In order for the special excess workers' compensation insurance policy to discharge the full obligations of a private employer to maintain a security deposit with the director for the payment of self-insured claims, applicable to the period to be covered by the policy, the special excess policy shall provide coverage for all claims for compensation arising out of that liability. The employer shall maintain the required deposit for the period covered by the policy with the director for a period of three years after the issuance date of the special excess policy.

(2) If the special workers' compensation insurance policy does not provide coverage for all of the continuing obligations for which the private self-insured employer is liable, to the extent the employer's obligations are not covered by the policy a private employer shall maintain the required deposit with the director. In addition, the employer shall maintain with the director the required deposit for the period covered by the policy for a period of three years after the issuance date of the special excess policy.

(e) The director shall adopt regulations pursuant to Section 3702.10 that are reasonably necessary to implement this section in order to reasonably protect injured workers, employers, the Self-Insurers' Security Fund, and the California Insurance Guarantee Association.

(f) The posting of a special excess workers' compensation insurance policy with the director shall discharge the obligation of the Self-Insurer's Security Fund pursuant to Section 3744 to pay claims in the event of an insolvency of a private employer to the extent of coverage of compensation liabilities under the special excess workers' compensation insurance policy. The California Insurance Guarantee Association and the Self-Insurers' Security Fund shall be advised by the director whenever a special excess workers' compensation insurance policy is posted.

(Amended by Stats. 2012, Ch. 363, Sec. 21. Effective January 1, 2013.)

3702.9. (a) In addition to remedies and penalties otherwise provided for a failure to secure the payment of compensation, the director may, after a determination that an obligation created in this article has been violated, also enter an order against any self-insured employer, including employers who are no longer self-insured, but who are required to comply with Section 3702.8, directing compliance, restitution for any losses, and a civil penalty in an amount not to exceed the following:

(1) For a failure to file a complete or timely annual report, an amount up to 5 percent of the incurred liabilities in the last report or one thousand five hundred dollars ($1,500), whichever is less, for each 30 days or portion thereof during which there is a failure.

(2) For failure to deposit and maintain a security deposit, an amount up to 10 percent of the increase not timely filed or five thousand dollars ($5,000), whichever is less, for each 30 days or portion thereof during which there is a failure.

(3) For a failure to timely or completely pay an assessment, an amount up to the assessment or two thousand five hundred dollars ($2,500), whichever is less, for each 30 days or portion thereof during which there is a failure.

(4) Where the failure was by an employer which knew or reasonably should have known of the obligation, the director shall, in addition, award reimbursement for all expenditures and costs by the fund or any intervening party, including a reasonable attorney fee.

(5) Where the failure was malicious, fraudulent, in bad faith, or a repeated violation, the director may award, as an additional civil penalty, liquidated damages of up to double the amounts assessed under paragraphs (1) to (4), inclusive, for deposit in the General Fund.

(b) An employer may deposit and maintain a security deposit or pay an assessment, reserving its right to challenge the amount or liability therefor at a hearing. If the director or the appeals board or a court, upon appeal, concludes that the employer is not liable or the amounts are excessive, then the director may waive, release, compromise, refund, or otherwise remit amounts which had been paid or deposited by an employer. The director may condition the waiver, release, compromise, refund, or remittance upon the present and continued future compliance with the obligations of subdivision (a) of Section 3702.8 for a period up to two years.

(c) Notwithstanding subdivision (b), where a violation has occurred, the director may waive, release, compromise, or otherwise reduce any civil penalty otherwise due upon a showing that a violation occurred through the employer's mistake, inadvertence, surprise, or excusable neglect. Neglect is not excusable within the meaning of this subdivision where

the employer knew, or reasonably should have known, of the obligations.

(Added by Stats. 1986, Ch. 1128, Sec. 12. Effective September 25, 1986.)

3702.10. The director, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, may adopt, amend, and repeal rules and regulations reasonably necessary to carry out the purposes of Section 129 and Article 1 (commencing with Section 3700), Article 2 (commencing with Section 3710), and Article 2.5 (commencing with Section 3740). This authorization includes, but is not limited to, the adoption of regulations to do all of the following:

(a) Specifying what constitutes ability to self-insure and to pay any compensation which may become due under Section 3700.

(b) Specifying what constitutes a marked reduction of an employer's financial strength.

(c) Specifying what constitutes a failure or inability to fulfill the employer's obligations under Section 3702.

(d) Interpreting and defining the terms used.

(e) Establishing procedures and standards for hearing and determinations, and providing for those determinations to be appealed to the appeals board.

(f) Specifying the standards, form, and content of agreements, forms, and reports between parties who have obligations pursuant to this chapter.

(g) Providing for the combinations and relative liabilities of security deposits, assumptions, and guarantees used pursuant to this chapter.

(h) Disclosing otherwise confidential financial information concerning self-insureds to courts or the Self-Insurers' Security Fund and specifying appropriate safeguards for that information.

(i) Requiring an amount to be added to each security deposit to secure the cost of administration of claims and to pay all legal costs.

(j) Regulating the workers' compensation self-insurance obligations of self-insurance groups and professional employer organizations, leasing employers as defined in Section 606.5 of the Unemployment Insurance Code, or temporary services employers, as defined in Section 606.5 of the Unemployment Insurance Code, holding certificates of consent to self-insure.

(Amended by Stats. 2012, Ch. 363, Sec. 22. Effective January 1, 2013.)

3703. So long as the certificate has not been revoked, and the self-insurer maintains on deposit the requisite bond or securities, the self-insurer shall not be required or obliged to pay into the State Compensation Insurance Fund any sums covering liability for compensation excepting life pensions; and the self-insurer may fully administer any compensation benefits assessed against the self-insurer.

(Amended by Stats. 1959, Ch. 951.)

3705. The Self-Insurers' Security Fund or the surety making payment of compensation hereunder shall have the same preference over the other debts of the principal or his or her estate as is given by law to the person directly entitled to the compensation.

(Amended by Stats. 1986, Ch. 1128, Sec. 14. Effective September 25, 1986.)

3706. If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply.

(Amended by Stats. 1971, Ch. 1598.)

3706.5. The provisions of this article and Sections 4553, 4554, and 4555, and any other penalty provided by law for failure to secure the payment of compensation for employees, shall not apply to individual members of a board or governing body of a public agency or to members of a private, nonprofit organization, if the agency or organization performs officiating services relating to amateur sporting events and such members are excluded from the definition of "employee" pursuant to subdivision (j) of Section 3352.

(Added by Stats. 1981, Ch. 21, Sec. 9. Effective April 18, 1981.)

3707. The injured employee or his dependents may in such action attach the property of the employer, at any time upon or after the institution of such action, in an amount fixed by the court, to secure the payment of any judgment which is ultimately obtained. The provisions of the Code of Civil Procedure, not inconsistent with this division, shall govern the issuance of, and proceedings upon such attachment.

(Enacted by Stats. 1937, Ch. 90.)

3708. In such action it is presumed that the injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof is upon the employer, to rebut the presumption of negligence. It is not a defense to the employer that the employee was guilty of contributory negligence, or assumed the risk of the hazard complained of, or that the injury was caused by the negligence of a fellow servant. No contract or regulation shall restore to the employer any of the foregoing defenses.

This section shall not apply to any employer of an employee, as defined in subdivision (d) of Section 3351, with respect to such employee, but shall apply to employers of employees described in subdivision (b) of Section 3715, with respect to such employees.

(Amended by Stats. 1977, Ch. 17.)

3708.5. If an employee brings such an action for damages, the employee shall forthwith give a copy of the complaint to the Uninsured Employers Fund of the action by personal service or certified mail. Proof of such service shall be filed in such action. If a civil action has been initiated against the employer pursuant to Section 3717, the actions shall be consolidated.

(Added by Stats. 1980, Ch. 1091.)

3709. If, as a result of such action for damages, a judgment is obtained against the employer, any compensation awarded, paid, or secured by the employer shall be credited against the judgment. The court shall allow as a first lien against such judgment the amount of compensation paid by the director from the Uninsured Employers Fund pursuant to Section 3716.

Such judgment shall include a reasonable attorney's fee fixed by the court. The director, as administrator of the Uninsured Employers Fund, shall have a first lien against any proceeds of settlement in such action, before or after judgment, in the amount of compensation paid by the director from the Uninsured Employers Fund pursuant to Section 3716.

No satisfaction of a judgment in such action, in whole or in part, shall be valid as against the director without giving the director notice and a reasonable opportunity to perfect and satisfy his lien.

(Amended by Stats. 1980, Ch. 1091.)

3709.5. After the payment of attorney's fees fixed by the court, the employer shall be relieved from the obligation to pay further compensation to or on behalf of the employee under this division up to the entire amount of the balance of the judgment, if satisfied, or such portion as has been satisfied.

After the satisfaction by the employer of the attorney's fees fixed by the court, the Uninsured Employers Fund shall be relieved from the obligation to pay further compensation to or

on behalf of the employee pursuant to Section 3716, up to the entire amount of the balance of the judgment, if satisfied, or such portion as has been satisfied.

The appeals board shall allow as a credit to the employer and to the Uninsured Employers Fund, to be applied against the liability for compensation, the amount recovered by the employee in such action, either by settlement or after the judgment, as has not been applied to the expense of attorney's fees and costs.

(Added by Stats. 1980, Ch. 1091.)

Article 2. Uninsured Employers Fund

(Heading of Article 2 added by Stats. 1980, Ch. 852.)

3710. (a) The Director of Industrial Relations shall enforce the provisions of this article. The director may employ necessary investigators, clerks, and other employees, and make use of the services of any employee of the department whom he may assign to assist him in the enforcement of this article. Prosecutions for criminal violations of this division may be conducted by the appropriate public official of the county in which the offense is committed, by the Attorney General, or by any attorney in the civil service of the Department of Industrial Relations designated by the director for such purpose.

(b) The director, in accordance with the provisions of Chapter 4 (commencing at Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code, may adopt, amend and repeal such rules and regulations as are reasonably necessary for the purpose of enforcing and administering this article and as are not inconsistent with law.

(c) As used in this article, "director" means the Director of Industrial Relations or the director's designated agents.

(Amended by Stats. 1980, Ch. 852.)

3710.1. Where an employer has failed to secure the payment of compensation as required by Section 3700, the director shall issue and serve on such employer a stop order prohibiting the use of employee labor by such employer until the employer's compliance with the provisions of Section 3700. Such stop order shall become effective immediately upon service. Any employee so affected by such work stoppage shall be paid by the employer for such time lost, not exceeding 10 days, pending compliance by the employer. Such employer may protest the stop order by making and filing with the director a written request for a hearing within 20 days after service of such stop order. Such hearing shall be held within 5 days from the date of filing such request. The director shall notify the employer of the time and place of the hearing by mail. At the conclusion of the hearing the stop order shall be immediately affirmed or dismissed, and within 24 hours thereafter the director shall issue and serve on all parties to the hearing by registered or certified mail a written notice of findings and findings. A writ of mandate may be taken from the findings to the appropriate superior court. Such writ must be taken within 45 days after the mailing of the notice of findings and findings.

(Repealed and added by Stats. 1980, Ch. 852.)

3710.2. Failure of an employer, officer, or anyone having direction, management, or control of any place of employment or of employees to observe a stop order issued and served upon him or her pursuant to Section 3710.1 is a misdemeanor punishable by imprisonment in the county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars ($10,000), or both. Fines shall be paid into the State Treasury to the credit of the Uninsured Employers Fund. The director may also obtain injunctive and other relief from the courts to carry out the purposes of Section 3710.1. The failure to obtain a policy of workers' compensation insurance or a certificate of consent to self-insure as required by Section 3700 is a misdemeanor in accordance with Section 3700.5.

(Amended by Stats. 1991, Ch. 600, Sec. 1.)

3710.3. Whenever a stop order has been issued pursuant to Section 3710.1 to a motor carrier of property subject to the jurisdiction and control of the Department of Motor Vehicles or to a household goods carrier, passenger stage corporation, or charter-party carrier of passengers subject to the jurisdiction and control of the Public Utilities Commission, the director shall transmit the stop order to the Public Utilities Commission or the Department of Motor Vehicles, whichever has jurisdiction over the affected carrier, within 30 days.

(Amended by Stats. 1998, Ch. 485, Sec. 123. Effective January 1, 1999.)

3711. The director, an investigator for the Department of Insurance Fraud Bureau or its successor, or a district attorney investigator assigned to investigate workers' compensation fraud may, at any time, require an employer to furnish a written statement showing the name of his or her insurer or the manner in which the employer has complied with Section 3700. Failure of the employer for a period of 10 days to furnish the written statement is prima facie evidence that he or she has failed or neglected in respect to the matters so required. The 10-day period may not be construed to allow an uninsured employer, so found by the director, any extension of time from the application of the provisions of Section 3710.1. An insured employer who fails to respond to an inquiry respecting his or her status as to his or her workers' compensation security shall be assessed and required to pay a penalty of five hundred dollars ($500) to the director for deposit in the State Treasury to the credit of the Uninsured Employers Fund. In any prosecution under this article, the burden of proof is upon the defendant to show that he or she has secured the payment of compensation in one of the two ways set forth in Section 3700.

(Amended by Stats. 2004, 4th Ex. Sess., Ch. 2, Sec. 4. Effective March 6, 2005.)

3712. (a) The securing of the payment of compensation in a way provided in this division is essential to the functioning of the expressly declared social public policy of this state in the matter of workers' compensation. The conduct or operation of any business or undertaking without full compensation security, in continuing violation of social policy, shall be subject to imposition of business strictures and monetary penalties by the director, including, but not limited to, resort to the superior court of any county in which all or some part of the business is being thus unlawfully conducted or operated, for carrying out the intent of this article.

(b) In a proceeding before the superior court in matters concerned with this article, no filing fee shall be charged to the plaintiff; nor may any charge or cost be imposed for any act or service required of or done by any state or county officer or employee in connection with the proceeding. If the court or the judge before whom the order to show cause in the proceeding is made returnable, finds that the defendant is conducting or operating a business or undertaking without the full compensation security required, the court or judge shall forthwith, and without continuance, issue an order restraining the future or further conduct and operation of the business or undertaking so long as the violation of social public policy continues. The action shall be prosecuted by the Attorney General of California, the district attorney of the county in which suit is brought, the city attorney

of any city in which such a business or undertaking is being operated or conducted without full compensation security, or any attorney possessing civil service status who is an employee of the Department of Industrial Relations who may be designated by the director for that purpose. No finding made in the course of any such action is binding on the appeals board in any subsequent proceeding before it for benefits under this division.

(Amended by Stats. 1982, Ch. 517, Sec. 309.)

3714. (a) All cases involving the Uninsured Employers Fund or the Subsequent Injuries Fund as a party or involving death without dependents shall only be heard for conference, mandatory settlement conference pursuant to subdivision (d) of Section 5502, standby conference, or rating calendar at the district Workers' Compensation Appeals Board located in San Francisco, Los Angeles, Van Nuys, Anaheim, Sacramento, or San Diego, except for good cause shown and with the consent of the director. This subdivision shall not apply to trials or hearings pursuant to Section 5309 or to expedited hearings pursuant to subdivision (b) of Section 5502.

(b) For the cases specified in subdivision (a), the presiding judge of the Workers' Compensation Appeals Board located in San Francisco, Los Angeles, Van Nuys, Anaheim, Sacramento, or San Diego shall have the authority, either by standing order or on a case-by-case basis, to order a conference, mandatory settlement conference pursuant to subdivision (d) of Section 5502, standby conference, or rating calendar in which no testimony will be taken to be conducted by telephone conference call among the parties and their attorneys of record who do not reside in the county in which that appeals board is located. The cost of the scheduling of the conference call shall be charged against the appropriate fund of the department.

(c) Any filings of documents necessary for the proceedings specified in subdivisions (a) and (b) may be served on the appeals board and the parties by facsimile machine, but if so served, within five workings days service shall be made on the appeals board and the parties as required by regulation.

(d) This section shall remain in effect for two years commencing on the date that the administrative director certifies and publishes that the rearrangement of judicial resources required by this section, and conference call facilities required for this section are in place. The certification shall be published in the California Notice Register, but shall be required to have been posted in the office of each appeals board at least 30 days prior to that publication. Notwithstanding this section, with the permission of the presiding judge and under standards set by the administrative director, parties may be permitted to conclude existing cases where they were filed. This section shall cease to be operative at the end of that two-year period, and shall be repealed on January 1 following that date.

(Added by Stats. 1992, Ch. 611, Sec. 1. Effective January 1, 1993. Section operative on date prescribed by subd. (d). Inoperative two years after operative date. Repealed on January 1 after inoperative date, by its own provisions.)

3715. (a) Any employee, except an employee as defined in subdivision (d) of Section 3351, whose employer has failed to secure the payment of compensation as required by this division, or his or her dependents in case death has ensued, may, in addition to proceeding against his or her employer by civil action in the courts as provided in Section 3706, file his or her application with the appeals board for compensation and the appeals board shall hear and determine the application for compensation in like manner as in other claims and shall make the award to the claimant as he or she would be entitled to receive if the employer had secured the payment of compensation as required, and the employer shall pay the award in the manner and amount fixed thereby or shall furnish to the appeals board a bond, in any amount and with any sureties as the appeals board requires, to pay the employee the award in the manner and amount fixed thereby.

(b) Notwithstanding this section or any other provision of this chapter except Section 3708, any person described in subdivision (d) of Section 3351 who is (1) engaged in household domestic service who is employed by one employer for over 52 hours per week, (2) engaged as a part-time gardener in connection with a private dwelling, if the number of hours devoted to the gardening work for any individual regularly exceeds 44 hours per month, or (3) engaged in casual employment where the work contemplated is to be completed in not less than 10 working days, without regard to the number of persons employed, and where the total labor cost of the work is not less than one hundred dollars ($100) (which amount shall not include charges other than for personal services), shall be entitled, in addition to proceeding against his or her employer by civil action in the courts as provided in Section 3706, to file his or her application with the appeals board for compensation. The appeals board shall hear and determine the application for compensation in like manner as in other claims, and shall make the award to the claimant as he or she would be entitled to receive if the person's employer had secured the payment of compensation as required, and the employer shall pay the award in the manner and amount fixed thereby, or shall furnish to the appeals board a bond, in any amount and with any sureties as the appeals board requires, to pay the employee the award in the manner and amount fixed thereby.

It is the intent of the Legislature that the amendments to this section by Chapter 17 of the Statutes of 1977, make no change in the law as it applied to those types of employees covered by this subdivision prior to the effective date of Chapter 1263 of the 1975 Regular Session.

(c) In any claim in which it is alleged that the employer has failed to secure the payment of compensation, the director, only for purposes of this section and Section 3720, shall determine, on the basis of the evidence available to him or her, whether the employer was prima facie illegally uninsured. A finding that the employer was prima facie illegally uninsured shall be made when the director determines that there is sufficient evidence to constitute a prima facie case that the employer employed an employee on the date of the alleged injury and had failed to secure the payment of compensation, and that the employee was injured arising out of, and occurring in the course of, the employment.

Failure of the employer to furnish within 10 days the written statement in response to a written demand for a written statement prescribed in Section 3711, addressed to the employer at its address as shown on the official address record of the appeals board, shall constitute in itself sufficient evidence for a prima facie case that the employer failed to secure the payment of compensation.

A written denial by the insurer named in the statement furnished by the employer as prescribed in Section 3711, that the employer was so insured as claimed, or the nonexistence of a valid certificate of consent to self-insure for the time of the claimed injury, if the statement furnished by the employer claims the employer was self-insured, shall constitute in itself sufficient evidence for a prima facie case that the employer had failed to secure the payment of compensation.

The nonexistence of a record of the employer's insurance with the Workers' Compensation Insurance Rating Bureau shall constitute in itself sufficient evidence for a prima facie case that the employer failed to secure the payment of compensation.

The unrebutted written declaration under penalty of perjury by the injured employee, or applicant other than the employee, that the employee was employed by the employer at the time of the injury, and that he or she was injured in the course of his or her employment, shall constitute, in itself, sufficient evidence for a prima facie case that the employer employed the employee at the time of the injury, and that the employee was injured arising out of, and occurring in the course of, the employment.

(d) When the director determines that an employer was prima facie illegally uninsured, the director shall mail a written notice of the determination to the employer at his or her address as shown on the official address record of the appeals board, and to any other more recent address the director may possess. The notice shall advise the employer of its right to appeal the finding, and that a lien may be placed against the employer's and any parent corporation's property, or the property of substantial shareholders of a corporate employer as defined by Section 3717.

Any employer aggrieved by a finding of the director that it was prima facie illegally uninsured may appeal the finding by filing a petition before the appeals board. The petition shall be filed within 20 days after the finding is issued. The appeals board shall hold a hearing on the petition within 20 days after the petition is filed with the appeals board. The appeals board shall have exclusive jurisdiction to determine appeals of the findings by the director, and no court of this state has jurisdiction to review, annul, or suspend the findings or the liens created thereunder, except as provided by Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4.

(e) Any claim brought against an employer under this section may be resolved by the director by compromise and release or stipulated findings and award as long as the appeals board has acquired jurisdiction over the employer and the employer has been given notice and an opportunity to object.

Notice may be given by service on the employer of an appeals board notice of intention to approve the compromise and release or stipulated findings and award. The employer shall have 20 days after service of the notice of intention to file an objection with the appeals board and show good cause therefor.

If the employer objects, the appeals board shall determine if there is good cause for the objection.

If the appeals board finds good cause for the objection, the director may proceed with the compromise and release or stipulated findings and award if doing so best serves the interest of the Uninsured Employers Fund, but shall have no cause of action against the employer under Section 3717 unless the appeals board case is tried to its conclusion and the employer is found liable.

If the appeals board does not find good cause for the objection, and the compromise and release or stipulated findings and award is approved, the Uninsured Employers Fund shall have a cause of action against the employer pursuant to Section 3717.

(f) The director may adopt regulations to implement and interpret the procedures provided for in this section.

(Amended by Stats. 1989, Ch. 461, Sec. 1.)

3716. (a) If the employer fails to pay the compensation required by Section 3715 to the person entitled thereto, or fails to furnish the bond required by Section 3715 within a period of 10 days after notification of the award, the award, upon application by the person entitled thereto, shall be paid by the director from the Uninsured Employers Benefits Trust Fund. The expenses of the director in administering these provisions, directly or by contract pursuant to Section 3716.1, shall be paid from the Workers' Compensation Administration Revolving Fund. Refunds may be paid from the Uninsured Employers Benefits Trust Fund for amounts remitted erroneously to the fund, or the director may authorize offsetting subsequent remittances to the fund.

(b) It is the intent of the Legislature that the Uninsured Employers Benefits Trust Fund is created to ensure that workers who happen to be employed by illegally uninsured employers are not deprived of workers' compensation benefits, and is not created as a source of contribution to insurance carriers, or self-insured, or legally insured employers. The Uninsured Employers Benefits Trust Fund has no liability for claims of occupational disease or cumulative injury unless no employer during the period of the occupational disease or cumulative injury during which liability is imposed under Section 5500.5 was insured for workers' compensation, was permissibly self-insured, or was legally uninsured. No employer has a right of contribution against the Uninsured Employers Benefits Trust Fund for the liability of an illegally uninsured employer under an award of benefits for occupational disease or cumulative injury, nor may an employee in a claim of occupational disease or cumulative injury elect to proceed against an illegally uninsured employer.

(c) The Uninsured Employers Benefits Trust Fund has no liability to pay for medical, surgical, chiropractic, hospital, or other treatment, the liability for which treatment is imposed upon the employer pursuant to Section 4600, and which treatment has been provided or paid for by the State Department of Health Services pursuant to the California Medical Assistance Program.

(d) The Uninsured Employers Benefits Trust Fund shall have no liability to pay compensation, nor shall it be joined in any appeals board proceeding, unless the employer alleged to be illegally uninsured shall first either have made a general appearance or have been served with the application specified in Section 3715 and with a special notice of lawsuit issued by the appeals board. The special notice of lawsuit shall be in a form to be prescribed by the appeals board, and it shall contain at least the information and warnings required by the Code of Civil Procedure to be contained in the summons issued in a civil action. The special notice of lawsuit shall also contain a notice that if the appeals board makes an award against the defendant that his or her house or other dwelling and other property may be taken to satisfy the award in a nonjudicial sale, with no exemptions from execution. The special notice of lawsuit shall, in addition, contain a notice that a lien may be imposed upon the defendant's property without further hearing and before the issuance of an award. The applicant shall identify a legal person or entity as the employer named in the special notice of lawsuit. The reasonable expense of serving the application and special notice of lawsuit, when incurred by the employee, shall be awarded as a cost. Proof of service of the special notice of lawsuit and application shall be filed with the appeals board.

(1) The application and special notice of lawsuit may be served, within or without this state, in the manner provided for service of summons in the Code of Civil Procedure. Thereafter, an employer, alleged to be illegally uninsured, shall notify the appeals board of the address at which it may be served with official notices and papers, and shall notify the appeals board of any changes in the address. No findings, order, decision, award, or other notice or paper need be served in this manner on an

employer, alleged to be illegally uninsured, who has been served as provided in this section, and who has not filed an answer, otherwise made a general appearance, or furnished the appeals board with its address. The findings, orders, decisions, awards, or other notice or paper may be mailed to the employer as the board, by regulation, may provide.

(2) Notwithstanding paragraph (1), if the employer alleged to be illegally uninsured has not filed an answer, otherwise made a general appearance, or furnished the appeals board with its address, the appeals board shall serve any findings, order, decision, award, or other notice or paper on the employer by mail at the address the appeals board has for the employer. The failure of delivery at that address or the lack of personal service on an employer who has been served as provided in this section, of these findings, order, decision, award, or other notice or paper, shall not constitute grounds for reopening or invalidating any appeals board action pursuant to Section 5506, or for contesting the validity of any judgment obtained under Section 3716 or 5806, a lien under Section 3720, or a settlement under subdivision (e) of Section 3715.

(3) The board, by regulation, may provide for service procedures in cases where a request for new and further benefits is made after the issuance of any findings and award and a substantial period of time has passed since the first service or attempted service.

(4) The director, on behalf of the Uninsured Employers Benefits Trust Fund, shall furnish information as to the identities, legal capacities, and addresses of uninsured employers known to the director upon request of the board or upon a showing of good cause by the employee or the employee's representative. Good cause shall include a declaration by the employee's representative, filed under penalty of perjury, that the information is necessary to represent the employee in proceedings under this division.

(Amended by Stats. 2003, Ch. 228, Sec. 28. Effective August 11, 2003.)

3716.1. (a) In any hearing, investigation, or proceeding, the Attorney General, or attorneys of the Department of Industrial Relations, shall represent the director and the state. Expenses incident to representation of the director and the state, before the appeals board and in civil court, by the Attorney General or Department of Industrial Relations attorneys, shall be reimbursed from the Workers' Compensation Administration Revolving Fund. Expenses incident to representation by the Attorney General or attorneys of the Department of Industrial Relations incurred in attempts to recover moneys pursuant to Section 3717 of the Labor Code shall not exceed the total amounts recovered by the director on behalf of the Uninsured Employers Benefits Trust Fund pursuant to this chapter.

(b) The director shall assign investigative and claims' adjustment services respecting matters concerning uninsured employers injury cases. The director or his or her representative may make these service assignments within the department, or he or she may contract for these services with the State Compensation Insurance Fund, except insofar as these matters might conflict with the interests of the State Compensation Insurance Fund. The administrative costs associated with these services shall be reimbursed from the Workers' Compensation Administration Revolving Fund and the nonadministrative costs from the Uninsured Employers Benefits Trust Fund, except when a budget impasse requires advances as described in subdivision (c) of Section 62.5. To the extent permitted by state law, the director may contract for audits or reports of services under this section.

(Amended by Stats. 2012, Ch. 728, Sec. 120. Effective January 1, 2013.)

3716.2. Notwithstanding the precise elements of an award of compensation benefits, and notwithstanding the claim and demand for payment being made therefor to the director, the director, as administrator of the Uninsured Employers Fund, shall pay the claimant only such benefits allowed, recognizing proper liens thereon, that would have accrued against an employer properly insured for workers' compensation liability. The Uninsured Employers Fund shall not be liable for any penalties or for the payment of interest on any awards. However, in civil suits by the director to enforce payment of an award, including procedures pursuant to Section 3717, the total amount of the award, including interest, other penalties, and attorney's fees granted by the award, shall be sought. Recovery by the director, in a civil suit or by other means, of awarded benefits in excess of amounts paid to the claimant by the Uninsured Employers Fund shall be paid over to the injured employee or his representative, as the case may be.

(Amended by Stats. 1999, Ch. 83, Sec. 133. Effective January 1, 2000.)

3716.3. (a) Notwithstanding any other provision of law to the contrary, when the director obtains a judgment against an uninsured employer, the director may, in addition to any other remedies provided by law, enforce the judgment by nonjudicial foreclosure. This enforcement shall not be subject to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure relating to claiming exemptions after levy.

(b) To enforce the judgment by nonjudicial foreclosure, the director shall record with the county recorder of any county in which real property of the parties against whom the judgment is taken is located, a certified copy of the judgment together with the director's notice of intent to foreclose. The notice of intent to foreclose shall set forth all of the following:

(1) The name, address, and telephone number of the trustee authorized by the director to enforce the lien by sale.

(2) The legal description of the real property to be foreclosed upon.

(3) Proof of service by registered or certified mail on the following:

(A) The parties against whom the foreclosure is sought at their last known address as shown on the official records of the appeals board and as shown on the latest recorded deed, deed of trust, or mortgage affecting the real property which is the subject of the foreclosure.

(B) All of the owners of the real property which is subject to the foreclosure at their last address as shown on the latest equalized assessment roll.

(c) Upon the expiration of 20 days following recording of the judgment and notice of intent to foreclose, the trustee may proceed to sell the real property. Any sale by the trustee shall be conducted in accordance with Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code applicable to the exercise of powers of sale of property under powers created by mortgages and deeds of trust.

(d) The director may authorize any person, including an attorney, corporation, or other business entity, to act as trustee pursuant to subdivision (b).

(e) Except as provided in subdivision (f), this section shall apply to all judgments which the director has obtained or may obtain pursuant to Section 3717, 3726, or 5806.

(f) This section shall not apply to the principal residence of an employer if the appeals board finds that the employer, on the date of injury, employed 10 or fewer employees. An employer

seeking this exemption shall provide proof of payment of tax withholding required pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code, to assist in determining the number of employees on the date of injury.

(Added by Stats. 1990, Ch. 770, Sec. 2. Applicable retroactively as prescribed by Sec. 4 of Ch. 770.)

3716.4. Whenever a final judgment has been entered against a motor carrier of property subject to the jurisdiction and control of the Department of Motor Vehicles or a passenger stage corporation, charter-party carrier of passengers, or a household goods carrier subject to the jurisdiction and control of the Public Utilities Commission as a result of an award having been made pursuant to Section 3716.2, the director may transmit to the Public Utilities Commission or the Department of Motor Vehicles, whichever has jurisdiction over the affected carrier, a copy of the judgment along with the name and address of the regulated entity and any other persons, corporations, or entities named in the judgment which are jointly and severally liable for the debt to the State Treasury with a complaint requesting that the Public Utilities Commission or the Department of Motor Vehicles immediately revoke the carrier's Public Utilities Commission certificate of public convenience and necessity or Department of Motor Vehicles motor carrier permit.

(Amended by Stats. 1996, Ch. 1042, Sec. 2.5. Effective September 29, 1996.)

3716.5. In the payment of workers' compensation benefits from the Uninsured Employers Fund, the director shall do the following:

(a) Designate the job classifications of employees who are paid compensation from the fund.

(b) Compile data on the job classifications of employees paid compensation from the fund and report this data to the Legislature by November 1, 1990, and annually thereafter.

(Added by Stats. 1989, Ch. 827, Sec. 1.)

3717. (a) A findings and award that is the subject of a demand on the Uninsured Employers Fund or an approved compromise and release or stipulated findings and award entered into by the director pursuant to subdivision (e) of Section 3715, or a decision and order of the rehabilitation unit of the Division of Workers' Compensation, that has become final, shall constitute a liquidated claim for damages against an employer in the amount so ascertained and fixed by the appeals board, and the appeals board shall certify the same to the director who may institute a civil action against the employer in the name of the director, as administrator of the Uninsured Employers Fund, for the collection of the award, or may obtain a judgment against the employer pursuant to Section 5806. In the event that the appeals board finds that a corporation is the employer of an injured employee, and that the corporation has not secured the payment of compensation as required by this chapter, the following persons shall be jointly and severally liable with the corporation to the director in the action:

(1) All persons who are a parent, as defined in Section 175 of the Corporations Code, of the corporation.

(2) All persons who are substantial shareholders, as defined in subdivision (b), of the corporation or its parent. In the action it shall be sufficient for plaintiff to set forth a copy of the findings and award of the appeals board relative to the claims as certified by the appeals board to the director and to state that there is due to plaintiff on account of the finding and award of the appeals board a specified sum which plaintiff claims with interest. The director shall be further entitled to costs and reasonable attorney fees, and to his or her investigation and litigation expenses for the appeals board proceedings, and a reasonable attorney fee for litigating the appeals board proceedings. A certified copy of the findings and award in the claim shall be attached to the complaint. The contents of the findings and award shall be deemed proved. The answer or demurrer to the complaint shall be filed within 10 days, the reply or demurrer to the answer within 20 days, and the demurrer to the reply within 30 days after the return day of the summons or service by publication. All motions and demurrers shall be submitted to the court within 10 days after they are filed. At the time the civil action filed pursuant to this section is at issue, it shall be placed at the head of the trial docket and shall be first in order for trial.

Nothing in this chapter shall be construed to preclude informal adjustment by the director of a claim for compensation benefits before the issuance of findings and award wherever it appears to the director that the employer is uninsured and that informal adjustment will facilitate the expeditious delivery of compensation benefits to the injured employee.

(b) As used in this section, "substantial shareholder" means a shareholder who owns at least 15 percent of the total value of all classes of stock, or, if no stock has been issued, who owns at least 15 percent of the beneficial interests in the corporation.

(c) For purposes of this section, in determining the ownership of stock or beneficial interest in the corporation, in the determination of whether a person is a substantial shareholder of the corporation, the rules of attribution of ownership of Section 17384 of the Revenue and Taxation Code shall be applied.

(d) For purposes of this section, "corporation" shall not include:

(1) Any corporation which is the issuer of any security which is exempted by Section 25101 of the Corporations Code from Section 25130 of the Corporations Code.

(2) Any corporation which is the issuer of any security exempted by subdivision (c), (d), or (i) of Section 25100 of the Corporations Code from Sections 25110, 25120, and 25130 of the Corporations Code.

(3) Any corporation which is the issuer of any security which has qualified either by coordination, as provided by Section 25111 of the Corporations Code, or by notification, as provided by Section 25112 of the Corporations Code.

(Amended by Stats. 1994, Ch. 146, Sec. 148. Effective January 1, 1995.)

3717.1. In any claim in which an alleged uninsured employer is a corporation, the director may cause substantial shareholders and parents, as defined by Section 3717, to be joined as parties. Substantial shareholders may be served as provided in this division for service on adverse parties, or if they cannot be found with reasonable diligence, by serving the corporation. The corporation, upon this service, shall notify the shareholder of the service, and mail the served document to him or her at the shareholder's last address known to the corporation.

(Added by Stats. 1985, Ch. 1547, Sec. 3.)

3717.2. Upon request of the director, the appeals board shall make findings of whether persons are substantial shareholders or parents, as defined in Section 3717. The director may in his or her discretion proceed against substantial shareholders and parents pursuant to Section 3717 without those findings of the appeals board.

(Added by Stats. 1985, Ch. 1547, Sec. 4.)

3718. The cause of action provided in Section 3717 and any cause of action arising out of Section 3722 may be joined in one action against an employer. The amount recovered in such action

from such employer shall be paid into the State Treasury to the credit of the Uninsured Employers Fund.

(Amended by Stats. 1976, Ch. 1036.)

3719. Any suit, action, proceeding, or award brought or made against any employer under Section 3717 may be compromised by the director, or such suit, action, or proceeding may be prosecuted to final judgment as in the discretion of the director may best subserve the interests of the Uninsured Employers Fund.

(Amended by Stats. 1980, Ch. 852.)

3720. (a) When the appeals board or the director determines under Section 3715 or 3716 that an employer has not secured the payment of compensation as required by this division or when the director has determined that the employer is prima facie illegally uninsured, the director may file for record in the office of the county recorder in the counties where the employer's property is possibly located, a certificate of lien showing the date that the employer was determined to be illegally uninsured or the date that the director has determined that the employer was prima facie illegally uninsured. The certificate shall show the name and address of the employer against whom it was filed, and the fact that the employer has not secured the payment of compensation as required by this division. Upon the recordation, the certificate shall constitute a valid lien in favor of the director, and shall have the same force, effect and priority as a judgment lien and shall continue for 10 years from the time of the recording of the certificate unless sooner released or otherwise discharged. A copy of the certificate shall be served upon the employer by mail, by the director. A facsimile signature of the director accompanied by the seal imprint of the department shall be sufficient for recording purposes of liens and releases or cancellations thereof considered herein. Certificates of liens may be filed in any or all counties of the state, depending upon the information the director obtains concerning the employer's assets.

(b) For purposes of this section, in the event the employer is a corporation, those persons whom either the appeals board finds are the parent or the substantial shareholders of the corporation or its parent, or whom the director finds pursuant to Section 3720.1 to be prima facie the parent or the substantial shareholders of the corporation or its parent, as defined in Section 3717, shall be deemed to be the employer, and the director may file the certificates against those persons.

(c) A person who claims to be aggrieved by the filing of a lien against the property of an uninsured employer because he or she has the same or a similar name, may apply to the director to have filed an amended certificate of lien which shows that the aggrieved applicant is not the uninsured employer which is the subject of the lien. If the director finds that the aggrieved applicant is not the same as the uninsured employer, the director shall file an amended certificate of lien with the county recorder of the county in which the aggrieved applicant has property, which shall show, by reasonably identifying information furnished by the aggrieved applicant, that the uninsured employer and the aggrieved applicant are not the same. If the director does not file the amended certificate of lien within 60 days of application therefor, the applicant may appeal the director's failure to so find by filing a petition with the appeals board, which shall make a finding as to whether the applicant and the uninsured employer are the same.

(d) Liens filed under this section have continued existence independent of, and may be foreclosed upon independently of, any right of action arising out of Section 3717 or 5806.

(Amended by Stats. 1992, Ch. 1226, Sec. 2. Effective January 1, 1993.)

3720.1. (a) In any claim in which the alleged uninsured employer is a corporation, for purposes of filing certificates of lien pursuant to Section 3720, the director may determine, according to the evidence available to him or her, whether a person is prima facie a parent or substantial shareholder, as defined in Section 3717. A finding that a person was prima facie a parent or substantial shareholder shall be made when the director determines that there is sufficient evidence to constitute a prima facie case that the person was a parent or substantial shareholder.

(b) Any person aggrieved by a finding of the director that he or she was prima facie a parent or substantial shareholder may request a hearing on the finding by filing a written request for hearing with the director. The director shall hold a hearing on the matter within 20 days of the receipt of the request for hearing, and shall mail a notice of time and place of hearing to the person requesting hearing at least 10 days prior to the hearing. The hearing officer shall hear and receive evidence, and within 10 days of the hearing, file his or her findings on whether there is sufficient evidence to constitute a prima facie case that the person was a substantial shareholder or parent. The hearing officer shall serve with his or her findings a summary of evidence received and relied upon, and the reasons for the findings. A party may at his or her own expense require that the hearing proceedings be recorded and transcribed.

(c) A party aggrieved by the findings of the hearing officer may within 20 days apply for a writ of mandate to the superior court. Venue shall lie in the county in which is located the office of the director which issued the findings after the hearing.

(Added by Stats. 1985, Ch. 1547, Sec. 6.)

3721. The director shall provide the employer with a certificate of cancellation of lien after the employer has paid to the claimant or to the Uninsured Employers Fund the amount of the compensation or benefits which has been ordered paid to the claimant, or when the application has finally been denied after the claimant has exhausted the remedies provided by law in those cases, or when the employer has filed a bond in the amount and with such surety as the appeals board approves conditioned on the payment of all sums ordered paid to the claimant, or when, after a finding that the employer was prima facie illegally uninsured, it is finally determined that the finding was in error. The recorder shall make no charge for filing the certificates of lien, for filing amended certificates of lien, or for cancellation when liens are filed in error. Cancellation of lien certificates provided to the employer may be filed for recordation by the employer at his or her expense.

(Amended by Stats. 1985, Ch. 1547, Sec. 7.)

3722. (a) At the time the stop order is issued and served pursuant to Section 3710.1, the director shall also issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers Fund, the sum of one thousand five hundred dollars ($1,500) per employee employed at the time the order is issued and served, as an additional penalty for being uninsured at that time or issue and serve a penalty assessment order pursuant to subdivision (b).

(b) At any time that the director determines that an employer has been uninsured for a period in excess of one week during the calendar year preceding the determination, the director shall issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers Fund, the greater of (1) twice the amount the employer would have paid in

workers' compensation premiums during the period the employer was uninsured, determined according to subdivision (c), or (2) the sum of one thousand five hundred dollars ($1,500) per employee employed during the period the employer was uninsured. A penalty assessment issued and served by the director pursuant to this subdivision shall be in lieu of, and not in addition to, any other penalty issued and served by the director pursuant to subdivision (a).

(c) If the employer is currently insured, or becomes insured during the period during which the penalty under subdivision (b) is being determined, the amount an employer would have paid in workers' compensation premiums shall be calculated by prorating the current premium for the number of weeks the employer was uninsured within the three-year period immediately prior to the date the penalty assessment is issued. If the employer is uninsured at the time the penalty under subdivision (b) is being determined, the amount an employer would have paid in workers' compensation premiums shall be the product of the employer's payroll for all periods of time the employer was uninsured within the three-year period immediately prior to the date the penalty assessment is issued multiplied by a rate determined in accordance with regulations that may be adopted by the director or, if none has been adopted, the manual rate or rates of the State Compensation Insurance Fund for the employer's governing classification pursuant to the standard classification system approved by the Insurance Commissioner. The classification shall be determined by the director or the director's designee at the time the penalty assessment is issued on the basis of any information available to the director regarding the employer's operations. Unless the amount of the employer's payroll for all periods during which the employer was uninsured within the three-year period is otherwise proven by a preponderance of evidence, the employer's payroll for each week the employer was uninsured shall be presumed to be the state average weekly wage multiplied by the number of persons employed by the employer at the time the penalty assessment is issued. For purposes of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12-month period ending March 31 of the calendar year preceding the year in which the penalty assessment order is issued.

(d) If upon the filing of a claim for compensation under this division the Workers' Compensation Appeals Board finds that any employer has not secured the payment of compensation as required by this division and finds the claim either noncompensable or compensable, the appeals board shall mail a copy of their findings to the uninsured employer and the director, together with a direction to the uninsured employer to file a verified statement pursuant to subdivision (e).

After the time for any appeal has expired and the adjudication of the claim has become final, the uninsured employer shall be assessed and pay as a penalty either of the following:

(1) In noncompensable cases, two thousand dollars ($2,000) per each employee employed at the time of the claimed injury.

(2) In compensable cases, ten thousand dollars ($10,000) per each employee employed on the date of the injury.

(e) In order to establish the number of employees the uninsured employer had on the date of the claimed injury in noncompensable cases and on the date of injury in compensable cases, the employer shall submit to the director within 10 days after service of findings, awards, and orders of the Workers' Compensation Appeals Board a verified statement of the number of employees in his or her employ on the date of injury. If the employer fails to submit to the director this verified statement or if the director disputes the accuracy of the number of employees reported by the employer, the director shall use any information regarding the number of employees as the director may have or otherwise obtains.

(f) Except for penalties assessed under subdivision (b), the maximum amount of penalties which may be assessed pursuant to this section is one hundred thousand dollars ($100,000). Payment shall be transmitted to the director for deposit in the State Treasury to the credit of the Uninsured Employers Fund.

(g) (1) The Workers' Compensation Appeals Board may provide for a summary hearing on the sole issue of compensation coverage to effect the provisions of this section.

(2) In the event a claim is settled by the director pursuant to subdivision (e) of Section 3715 by means of a compromise and release or stipulations with request for award, the appeals board may also provide for a summary hearing on the issue of compensability.

(Amended by Stats. 2009, Ch. 640, Sec. 1. Effective January 1, 2011. Note: Because Ch. 640 was chaptered on November 2, 2009, its effective date is January 1, 2011, not January 1, 2010.)

3725. If an employer desires to contest a penalty assessment order, the employer shall file with the director a written request for a hearing within 15 days after service of the order. Upon receipt of the request, the director shall set the matter for a hearing within 30 days thereafter and shall notify the employer of the time and place of the hearing by mail at least 10 days prior to the date of the hearing. The decision of the director shall consist of a notice of findings and findings which shall be served on all parties to the hearing by registered or certified mail within 15 days after the hearing. Any amount found due by the director as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings have been mailed by registered or certified mail to the party assessed. A writ of mandate may be taken from these findings to the appropriate superior court upon the execution by the party assessed of a bond to the state in double the amount found due and ordered paid by the director, as long as the party agrees to pay any judgment and costs rendered against the party for the assessment. The writ shall be taken within 45 days after mailing the notice of findings and findings.

(Amended by Stats. 1988, Ch. 96, Sec. 13.)

3726. (a) When no petition objecting to a penalty assessment order is filed, a certified copy of the order may be filed by the director in the office of the clerk of the superior court in any county in which the employer has property or in which the employer has or had a place of business. The clerk, immediately upon such filing, shall enter judgment for the state against the employer in the amount shown on the penalty assessment order.

(b) When findings are made affirming or modifying a penalty assessment order after hearing, a certified copy of such order and a certified copy of such findings may be filed by the director in the office of the clerk of the superior court in any county in which the employer has property or in which the employer has or had a place of business. The clerk, immediately upon such filing, shall enter judgment for the state against the employer in the amount shown on the penalty assessment order or in the amount shown in the findings if the order has been modified.

(c) A judgment entered pursuant to the provisions of this section may be filed by the clerk in a looseleaf book entitled

"Special Judgments for State Uninsured Employers Fund." Such judgment shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall make no charge for the service provided by this section to be performed by him.

(Amended by Stats. 1980, Ch. 852.)

3727. If the director determines pursuant to Section 3722 that an employer has failed to secure the payment of compensation as required by this division, the director may file with the county recorder of any counties in which such employer's property may be located his certificate of the amount of penalty due from such employer and such amount shall be a lien in favor of the director from the date of such filing against the real property and personal property of the employer within the county in which such certificate is filed. The recorder shall accept and file such certificate and record the same as a mortgage on real estate and shall file the same as a security interest and he shall index the same as mortgage on real estate and as a security interest. Certificates of liens may be filed in any and all counties of the state, depending upon the information the director obtains concerning the employer's assets. The recorder shall make no charge for the services provided by this section to be performed by him. Upon payment of the penalty assessment, the director shall issue a certificate of cancellation of penalty assessment, which may be recorded by the employer at his expense.

(Amended by Stats. 1980, Ch. 852.)

3727.1. The director may withdraw a stop order or a penalty assessment order where investigation reveals the employer had secured the payment of compensation as required by Section 3700 on the date and at the time of service of such order. The director also may withdraw a penalty assessment order where investigation discloses that the employer was insured on the date and at the time of an injury or claimed injury, or where an insured employer responded in writing to a request to furnish the status of his workers' compensation coverage within the time prescribed.

(Added by Stats. 1980, Ch. 852.)

3728. (a) The director may draw from the State Treasury out of the Uninsured Employers Benefits Trust Fund for the purposes of Sections 3716 and 3716.1, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate the level provided for pursuant to Section 16400 of the Government Code, to be used as a cash revolving fund. The revolving fund shall be deposited in any banks and under any conditions as the Department of General Services determines. The Controller shall draw his or her warrants in favor of the Director of Industrial Relations for the amounts so withdrawn and the Treasurer shall pay these warrants.

(b) Expenditures made from the revolving fund in payment of claims for compensation due from the Uninsured Employers Benefits Trust Fund and from the Workers' Compensation Administration Revolving Fund for administrative and adjusting services rendered are exempted from the operation of Section 925.6 of the Government Code. Reimbursement of the revolving fund from the Uninsured Employers Benefits Trust Fund or the Workers' Compensation Administration Revolving Fund for expenditures shall be made upon presentation to the Controller of an abstract or statement of the expenditures. The abstract or statement shall be in any form as the Controller requires.

(Amended by Stats. 2003, Ch. 228, Sec. 30. Effective August 11, 2003.)

3730. When the last day for filing any instrument or other document pursuant to this chapter falls upon a Saturday, Sunday or other holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

(Added by Stats. 1980, Ch. 852.)

3731. Any stop order or penalty assessment order may be personally served upon the employer either by (1) manual delivery of the order to the employer personally or by (2) leaving signed copies of the order during usual office hours with the person who is apparently in charge of the office and by thereafter mailing copies of the order by first class mail, postage prepaid to the employer at the place where signed copies of the order were left.

(Added by Stats. 1980, Ch. 852.)

3732. (a) If compensation is paid or becomes payable from the Uninsured Employers Fund, whether as a result of a findings and award, award based upon stipulations, compromise and release executed on behalf of the director, or payments voluntarily furnished by the director pursuant to Section 4903.3, the director may recover damages from any person or entity, other than the employer, whose tortious act or omission proximately caused the injury or death of the employee. The damages shall include any compensation, including additional compensation by way of interest or penalty, paid or payable by the director, plus the expense incurred by the director in investigating and litigating the workers' compensation claim and a reasonable attorney fee for litigating the workers' compensation claim. The director may compromise, or settle and release any claim, and may waive any claim, including the lien allowed by this section, in whole or in part, for the convenience of the director.

(b) Except as otherwise provided in this section, Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 shall be applicable to these actions, the director being treated as an employer within the meaning of Chapter 5 to the extent not inconsistent with this section.

(c) Actions brought under this section shall be commenced within one year after the later of either the time the director pays or the time the director becomes obligated to pay any compensation from the Uninsured Employers Fund.

(d) In the trial of these actions, any negligence attributable to the employer shall not be imputed to the director or to the Uninsured Employers Fund, and the damages recoverable by the director shall not be reduced by any percentage of fault or negligence attributable to the employer or to the employee.

(e) In determining the credit to the Uninsured Employers Fund provided by Section 3861, the appeals board shall not take into consideration any negligence of the employer, but shall allow a credit for the entire amount of the employee's recovery either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorney's fees.

(f) When an action or claim is brought by an employee, his or her guardian, conservator, personal representative, estate, survivors, or heirs against a third party who may be liable for causing the injury or death of the employee, any settlement or judgment obtained is subject to the director's claim for damages recoverable by the director pursuant to subdivision (a), and the director shall have a lien against any settlement in the amount of the damages.

(g) No judgment or settlement in any action or claim by an employee, his or her guardian, conservator, personal representative, survivors, or heirs to recover damages for injuries, where the director has an interest, shall be satisfied without first

giving the director notice and a reasonable opportunity to perfect and satisfy his or her lien. The director shall be mailed a copy of the complaint in the third-party action as soon as reasonable after it is filed with the court.

(h) When the director has perfected a lien upon a judgment or settlement in favor of an employee, his or her guardian, conservator, personal representative, survivors or heirs against any third party, the director shall be entitled to a writ of execution as a lien claimant to enforce payment of the lien against the third party with interest and other accruing costs as in the case of other executions. In the event the amount of the judgment or settlement so recovered has been paid to the employee, his or her guardian, conservator, personal representative, survivors, or heirs, the director shall be entitled to a writ of execution against the employee, his or her guardian, conservator, personal representative, survivors, or heirs to the extent of the director's lien, with interest and other accruing costs as in the cost of other executions.

(i) Except as otherwise provided in this section, notwithstanding any other provision of law, the entire amount of any settlement of the action or claim of the employee, his or her guardian, conservator, personal representative, survivors, or heirs, with or without suit, is subject to the director's lien claim for the damages recoverable by the director pursuant to subdivision (a).

(j) Where the action or claim is brought by the employee, his or her guardian, conservator, personal representative, estate, survivors, or heirs, and the director has not joined in the action, and the employee, his or her guardian, conservator, personal representative, estate, survivors, or heirs incur a personal liability to pay attorney's fees and costs of litigation, the director's claim for damages shall be limited to the amount of the director's claim for damages less that portion of the costs of litigation expenses determined by multiplying the total cost of litigation expenses by the ratio of the full amount of the director's claim for damages to the full amount of the judgment, award, or settlement, and less 25 percent of the balance after subtracting the director's share of litigation expenses, which represents the director's reasonable share of attorney's fees incurred.

(k) In the trial of the director's action for damages, and in the allowance of his or her lien in an action by the employee, guardian, executor, personal representative, survivors, or heirs, the compensation paid from the Uninsured Employers Fund pursuant to an award as provided in Section 3716 is conclusively presumed to be reasonable in amount and to be proximately caused by the event or events which caused the employee's injury or death.

(l) In the action for damages the director shall be entitled to recover, if he or she prevails, the entire amount of the damages recoverable by the director pursuant to subdivision (a), regardless of whether the damages recoverable by the employee, guardian, conservator, personal representative, survivors, or heirs are of lesser amount.

(Amended by Stats. 1989, Ch. 461, Sec. 3.)

3733. (a) The Legislature finds and declares that it is in the best interest of the State of California to provide a person, regardless of his or her citizenship or immigration status, with the benefits provided pursuant to this article, and therefore enacts this section pursuant to Section 1621(d) of Title 8 of the United States Code.

(b) A person shall not be prohibited from receiving compensation paid or payable from the Uninsured Employers Benefits Trust Fund solely because of his or her citizenship or immigration status.

(c) It is the intent of the Legislature to override Section 15740 of Article 1 of Subchapter 2.1.1 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations.

(d) The provisions of this section are declaratory of existing law.

(Added by Stats. 2015, Ch. 290, Sec. 1. Effective January 1, 2016.)

Article 2.5. Self-Insurers' Security Fund

(Article 2.5 added by Stats. 1984, Ch. 252, Sec. 5.)

3740. It is the intent of the Legislature in enacting this article and Article 1 (commencing with Section 3700) to provide for the continuation of workers' compensation benefits delayed due to the failure of a private self-insured employer to meet its compensation obligations when the employers' security deposit is either inadequate or not immediately accessible for the payment of benefits. With respect to the continued liability of a surety for claims that arose under a bond after termination of that bond and to a surety's liability for the cost of administration of claims, it is the intent of the Legislature to clarify existing law. The Legislature finds and declares that the establishment of the Self-Insurers' Security Fund is a necessary component of a complete system of workers' compensation, required by Section 4 of Article XIV of the California Constitution, to have adequate provisions for the comfort, health and safety, and general welfare of any and all workers and their dependents to the extent of relieving the consequences of any industrial injury or death, and full provision for securing the payment of compensation.

(Amended by Stats. 1986, Ch. 1128, Sec. 15. Effective September 25, 1986.)

3741. As used in this article:

(a) "Director" means the Director of Industrial Relations.

(b) "Private self-insurer" means a private employer which has secured the payment of compensation pursuant to subdivision (b) of Section 3700.

(c) "Insolvent self-insurer" means a private self-insurer who has failed to pay compensation and whose security deposit has been called by the director pursuant to Section 3701.5.

(d) "Fund" means the Self-Insurers' Security Fund established pursuant to Section 3742.

(e) "Trustees" means the Board of Trustees of the Self-Insurers' Security Fund.

(f) "Member" means a private self-insurer which participates in the Self-Insurers' Security Fund.

(Added by Stats. 1984, Ch. 252, Sec. 5. Effective June 27, 1984.)

3742. (a) The Self-Insurers' Security Fund shall be established as a Nonprofit Mutual Benefit Corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code and this article. If any provision of the Nonprofit Mutual Benefit Corporation Law conflicts with any provision of this article, the provisions of this article shall apply. Each private self-insurer shall participate as a member in the fund, unless its liabilities have been turned over to the fund pursuant to Section 3701.5, at which time its membership in the fund is relinquished.

(b) The fund shall be governed by a board of trustees with no more than eight members, as established by the bylaws of the Self-Insurers' Security Fund. The director shall hold ex officio status, with full powers equal to those of a trustee, except that the director shall not have a vote. The director, or a delegate authorized in writing to act as the director's representative on the board of trustees, shall carry out exclusively the responsibilities

set forth in Division 1 (commencing with Section 50) through Division 4 (commencing with Section 3200) and shall not have the obligations of a trustee under the Nonprofit Mutual Benefit Corporation Law. The fund shall adopt bylaws to segregate the director from all matters that may involve fund litigation against the department or fund participation in legal proceedings before the director. Although not voting, the director or a delegate authorized in writing to represent the director, shall be counted toward a quorum of trustees. The remaining trustees shall be representatives of private self-insurers. The self-insurer trustees shall be elected by the members of the fund, each member having one vote. Trustees shall be elected to four-year terms, and shall serve until their successors are elected and assume office pursuant to the bylaws of the fund.

(c) The fund shall establish bylaws as are necessary to effectuate the purposes of this article and to carry out the responsibilities of the fund, including, but not limited to, any obligations imposed by the director pursuant to Section 3701.8. The fund may carry out its responsibilities directly or by contract, and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees. The fund may receive confidential information concerning the financial condition of self-insured employers whose liabilities to pay compensation may devolve upon it and shall adopt bylaws to prevent dissemination of that information.

(d) The director may also require fund members to subscribe to financial instruments or guarantees to be posted with the director in order to satisfy the security requirements set by the director pursuant to Section 3701.8.

(Amended by Stats. 2012, Ch. 363, Sec. 23. Effective January 1, 2013.)

3743. (a) Upon order of the director pursuant to Section 3701.5, the fund shall assume the workers' compensation obligations of an insolvent self-insurer.

(b) Notwithstanding subdivision (a), the fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the fund, including, but not limited to, the penalties provided in Section 132a, 3706, 4553, 4554, 4556, 4557, 4558, 4601.5, 5814, or 5814.1.

(c) The fund shall be a party in interest in all proceedings involving compensation claims against an insolvent self-insurer whose compensation obligations have been paid or assumed by the fund. The fund shall have the same rights and defenses as the insolvent self-insurer, including, but not limited to, all of the following:

(1) To appear, defend, and appeal claims.

(2) To receive notice of, investigate, adjust, compromise, settle, and pay claims.

(3) To investigate, handle, and deny claims.

(Added by Stats. 1984, Ch. 252, Sec. 5. Effective June 27, 1984.)

3744. (a) (1) The fund shall have the right and obligation to obtain reimbursement from an insolvent self-insurer up to the amount of the self-insurer's workers' compensation obligations paid and assumed by the fund, including reasonable administrative and legal costs. This right includes, but is not limited to, a right to claim for wages and other necessities of life advanced to claimants as subrogee of the claimants in any action to collect against the self-insured as debtor. For purposes of this section, "insolvent self-insurer" includes the entity to which the certificate of consent to self-insure was issued, any guarantor of the entity's liabilities under the certificate, any member of a self-insurance group to which the certificate was issued, and any employer who obtained employees from a self-insured employer under subdivision (d) of Section 3602.

(2) The Legislature finds and declares that the amendments made to this subdivision by the act adding this paragraph are declaratory of existing law.

(b) The fund shall have the right and obligation to obtain from the security deposit of an insolvent self-insurer the amount of the self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund. Reimbursement of administrative costs, including legal costs, shall be subject to approval by a majority vote of the fund's trustees. The fund shall be a party in interest in any action to obtain the security deposit for the payment of compensation obligations of an insolvent self-insurer.

(c) The fund shall have the right to bring an action against any person to recover compensation paid and liability assumed by the fund, including, but not limited to, any excess insurance carrier of the self-insured employer, and any person whose negligence or breach of any obligation contributed to any underestimation of the self-insured employer's total accrued liability as reported to the director.

(d) The fund may be a party in interest in any action brought by any other person seeking damages resulting from the failure of an insolvent self-insurer to pay workers' compensation required pursuant to this division.

(e) At the election of the Self-Insurers' Security Fund, venue shall be in the Superior Court for the State of California, County of Sacramento, for any action under this section. All actions in which the Self-Insurers' Security Fund and two or more members or former members of one self-insurance group are parties shall be consolidated if requested by the Self-Insurers' Security Fund.

(Amended by Stats. 2012, Ch. 363, Sec. 24. Effective January 1, 2013.)

3745. (a) The fund shall maintain cash, readily marketable securities, or other assets, or a line of credit, approved by the director, sufficient to immediately continue the payment of the compensation obligations of an insolvent self-insurer pending assessment of the members. The director may establish the minimum amount to be maintained by, or immediately available to, the fund for this purpose.

(b) The fund may assess each of its members a pro rata share of the funding necessary to carry out the purposes of this article.

(c) The trustees shall certify to the director the collection and receipt of all moneys from assessments, noting any delinquencies. The trustees shall take any action deemed appropriate to collect any delinquent assessments.

(Amended by Stats. 2012, Ch. 363, Sec. 25. Effective January 1, 2013.)

3746. The fund shall annually contract for an independent certified audit of the financial activities of the fund. An annual report on the financial status of the fund as of June 30 shall be submitted to the director and to each member, or at the election of the fund, posted on the fund's Internet Web site.

(Amended by Stats. 2012, Ch. 363, Sec. 26. Effective January 1, 2013.)

3747. This article shall be known and may be referred to as the "Young-La Follette Self-Insurers' Security Act."

(Added by Stats. 1984, Ch. 252, Sec. 5. Effective June 27, 1984.)

Article 3. Insurance Rights and Privileges

(Heading of Article 3 renumbered from Article 2 by Stats. 1980, Ch. 852.)

3750. Nothing in this division shall affect:

(a) The organization of any mutual or other insurer.

(b) Any existing contract for insurance.

(c) The right of the employer to insure in mutual or other insurers, in whole or in part, against liability for the compensation provided by this division.

(d) The right to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents or representatives, of sick, accident, or death benefits, in addition to the compensation provided for by this division.

(e) The right of the employer to waive the waiting period provided for herein by insurance coverage.

(Enacted by Stats. 1937, Ch. 90.)

3751. (a) No employer shall exact or receive from any employee any contribution, or make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this division. Violation of this subdivision is a misdemeanor.

(b) If an employee has filed a claim form pursuant to Section 5401, a provider of medical services shall not, with actual knowledge that a claim is pending, collect money directly from the employee for services to cure or relieve the effects of the injury for which the claim form was filed, unless the medical provider has received written notice that liability for the injury has been rejected by the employer and the medical provider has provided a copy of this notice to the employee. Any medical provider who violates this subdivision shall be liable for three times the amount unlawfully collected, plus reasonable attorney's fees and costs.

(Amended by Stats. 1990, Ch. 997, Sec. 1.)

3752. Liability for compensation shall not be reduced or affected by any insurance, contribution or other benefit whatsoever due to or received by the person entitled to such compensation, except as otherwise provided by this division.

(Enacted by Stats. 1937, Ch. 90.)

3753. The person entitled to compensation may, irrespective of any insurance or other contract, except as otherwise provided in this division, recover such compensation directly from the employer. In addition thereto, he may enforce in his own name, in the manner provided by this division the liability of any insurer either by making the insurer a party to the original application or by filing a separate application for any portion of such compensation.

(Enacted by Stats. 1937, Ch. 90.)

3754. Except as provided in paragraph (12) of subdivision (f) of Section 1202.4 of the Penal Code, payment, in whole or in part, of compensation by either the employer or the insurer shall, to the extent thereof, be a bar to recovery against each of them of the amount so paid.

(Amended by Stats. 2012, Ch. 868, Sec. 2. Effective January 1, 2013.)

3755. If the employer is insured against liability for compensation, and if after the suffering of any injury the insurer causes to be served upon any compensation claimant a notice that it has assumed and agreed to pay any compensation to the claimant for which the employer is liable, such employer shall be relieved from liability for compensation to such claimant upon the filing of a copy of such notice with the appeals board. The insurer shall, without further notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such claimant to recover such compensation, and the employer shall be dismissed therefrom.

Such proceedings shall not abate on account of such substitution but shall be continued against such insurer.

(Amended by Stats. 1965, Ch. 1513.)

3756. If at the time of the suffering of a compensable injury, the employer is insured against liability for the full amount of compensation payable, he may cause to be served upon the compensation claimant and upon the insurer a notice that the insurer has agreed to pay any compensation for which the employer is liable. The employer may also file a copy of such notice with the appeals board.

(Amended by Stats. 1965, Ch. 1513.)

3757. If it thereafter appears to the satisfaction of the appeals board that the insurer has assumed the liability for compensation, the employer shall thereupon be relieved from liability for compensation to the claimant. The insurer shall, after notice, be substituted in place of the employer in any proceeding instituted by the claimant to recover compensation, and the employer shall be dismissed therefrom.

(Amended by Stats. 1965, Ch. 1513.)

3758. A proceeding to obtain compensation shall not abate on account of substitution of the insurer in place of the employer and on account of the dismissal of the employer, but shall be continued against such insurer.

(Enacted by Stats. 1937, Ch. 90.)

3759. The appeals board may enter its order relieving the employer from liability where it appears from the pleadings, stipulations, or proof that an insurer joined as party to the proceeding is liable for the full compensation for which the employer in such proceeding is liable.

(Amended by Stats. 1965, Ch. 1513.)

3760. Every employer who is insured against any liability imposed by this division shall file with the insurer a complete report of every injury to each employee as specified in Section 6409.1. If not so filed, the insurer may petition the appeals board for an order, or the appeals board may of its own motion issue an order, directing the employer to submit a report of the injury within five days after service of the order. Failure of the employer to comply with the appeals board's order may be punished by the appeals board as a contempt.

(Amended by Stats. 1987, Ch. 1019, Sec. 4.)

3761. (a) An insurer securing an employer's liability under this division shall notify the employer, within 15 days, of each claim for indemnity filed against the employer directly with the insurer if the employer has not timely provided to the insurer a report of occupational injury or occupational illness pursuant to Section 6409.1. The insurer shall furnish an employer who has not filed this report with an opportunity to provide to the insurer, prior to the expiration of the 90-day period specified in Section 5402, all relevant information available to the employer concerning the claim.

(b) An employer shall promptly notify its insurer in writing at any time during the pendency of a claim when the employer has actual knowledge of any facts which would tend to disprove any aspect of the employee's claim. When an employer notifies its insurer in writing that, in the employer's opinion, no compensation is payable to an employee, at the employer's written request, to the appeals board, the appeals board may approve a compromise and release agreement, or stipulation, that provides compensation to the employee only where there is proof of service upon the employer by the insurer, to the employer's last known address, not less than 15 days prior to the appeals board action, of notice of the time and place of the hearing at which the compromise and release agreement or stipulation is to be approved. The insurer shall file proof of this service with the appeals board.

Failure by the insurer to provide the required notice shall not prohibit the board from approving a compromise and release agreement, or stipulation; however, the board shall order the insurer to pay reasonable expenses as provided in Section 5813.

(c) In establishing a reserve pursuant to a claim that affects premiums against an employer, an insurer shall provide the employer, upon request, a written report of the reserve amount established. The written report shall include, at a minimum, the following:

(1) Estimated medical-legal costs.

(2) Estimated vocational rehabilitation costs, if any.

(3) Itemization of all other estimated expenses to be paid from the reserve.

(d) When an employer properly provides notification to its insurer pursuant to subdivision (b), and the appeals board thereafter determines that no compensation is payable under this division, the insurer shall reimburse the employer for any premium paid solely due to the inclusion of the successfully challenged payments in the calculation of the employer's experience modification. The employee shall not be required to refund the challenged payment.

(Amended by Stats. 1994, Ch. 1118, Sec. 5. Effective January 1, 1995.)

3762. (a) Except as provided in subdivisions (b) and (c), the insurer shall discuss all elements of the claim file that affect the employer's premium with the employer, and shall supply copies of the documents that affect the premium at the employer's expense during reasonable business hours.

(b) The right provided by this section shall not extend to any document that the insurer is prohibited from disclosing to the employer under the attorney-client privilege, any other applicable privilege, or statutory prohibition upon disclosure, or under Section 1877.4 of the Insurance Code.

(c) An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows:

(1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed and the treatment provided for this condition.

(2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

(Amended by Stats. 2013, Ch. 444, Sec. 20. Effective January 1, 2014.)

Article 4. Construction Permit

(Heading of Article 4 renumbered from Article 3 by Stats. 1980, Ch. 852.)

3800. (a) Every county or city which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall require that each applicant for the permit sign a declaration under penalty of perjury verifying workers' compensation coverage or exemption from coverage, as required by Section 19825 of the Health and Safety Code.

(b) At the time of permit issuance, contractors shall show their valid workers' compensation insurance certificate, or the city or county may verify the workers' compensation coverage by electronic means.

(Amended by Stats. 1999, Ch. 982, Sec. 8. Effective January 1, 2000.)

Article 5. Workers' Compensation Misrepresentations

(Article 5 added by Stats. 1993, Ch. 120, Sec. 4.5.)

3820. (a) In enacting this section, the Legislature declares that there exists a compelling interest in eliminating fraud in the workers' compensation system. The Legislature recognizes that the conduct prohibited by this section is, for the most part, already subject to criminal penalties pursuant to other provisions of law. However, the Legislature finds and declares that the addition of civil money penalties will provide necessary enforcement flexibility. The Legislature, in exercising its plenary authority related to workers' compensation, declares that these sections are both necessary and carefully tailored to combat the fraud and abuse that is rampant in the workers' compensation system.

(b) It is unlawful to do any of the following:

(1) Willfully misrepresent any fact in order to obtain workers' compensation insurance at less than the proper rate.

(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207.

(3) Knowingly solicit, receive, offer, pay, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for soliciting or referring clients or patients to obtain services or benefits pursuant to Division 4 (commencing with Section 3200) unless the payment or receipt of consideration for services other than the referral of clients or patients is lawful pursuant to Section 650 of the Business and Professions Code or expressly permitted by the Rules of Professional Conduct of the State Bar.

(4) Knowingly operate or participate in a service that, for profit, refers or recommends clients or patients to obtain medical or medical-legal services or benefits pursuant to Division 4 (commencing with Section 3200).

(5) Knowingly assist, abet, solicit, or conspire with any person who engages in an unlawful act under this section.

(c) For the purposes of this section, "statement" includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expenses as defined in Section 4620, or other evidence of loss, expense, or payment.

(d) Any person who violates any provision of this section shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than four thousand dollars ($4,000) nor more than ten thousand dollars ($10,000), plus an assessment of not more than three times the amount of the medical treatment expenses paid pursuant to Article 2 (commencing with Section 4600) and medical-legal expenses paid pursuant to Article 2.5 (commencing with Section 4620) for each claim for compensation submitted in violation of this section.

(e) Any person who violates subdivision (b) and who has a prior felony conviction of an offense set forth in Section 1871.1 or 1871.4 of the Insurance Code, or in Section 549 of the Penal Code, shall be subject, in addition to the penalties set forth in subdivision (d), to a civil penalty of four thousand dollars ($4,000) for each

item or service with respect to which a violation of subdivision (b) occurred.

(f) The penalties provided for in subdivisions (d) and (e) shall be assessed and recovered in a civil action brought in the name of the people of the State of California by any district attorney.

(g) In assessing the amount of the civil penalty the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(h) All penalties collected pursuant to this section shall be paid to the Workers' Compensation Fraud Account in the Insurance Fund pursuant to Section 1872.83 of the Insurance Code. All costs incurred by district attorneys in carrying out this article shall be funded from the Workers' Compensation Fraud Account. It is the intent of the Legislature that the program instituted by this article be supported entirely from funds produced by moneys deposited into the Workers' Compensation Fraud Account from the imposition of civil money penalties for workers' compensation fraud collected pursuant to this section. All moneys claimed by district attorneys as costs of carrying out this article shall be paid pursuant to a determination by the Fraud Assessment Commission established by Section 1872.83 of the Insurance Code and on appropriation by the Legislature.

(Amended by Stats. 2002, Ch. 6, Sec. 49. Effective January 1, 2003.)

3822. The administrative director shall, on an annual basis, provide to every employer, claims adjuster, third party administrator, physician, and attorney who participates in the workers' compensation system, a notice that warns the recipient against committing workers' compensation fraud. The notice shall specify the penalties that are applied for committing workers' compensation fraud. The Fraud Assessment Commission, established by Section 1872.83 of the Insurance Code, shall provide the administrative director with all funds necessary to carry out this section.

(Added by Stats. 2002, Ch. 6, Sec. 50. Effective January 1, 2003.)

3823. (a) The administrative director shall, in coordination with the Bureau of Fraudulent Claims of the Department of Insurance, the Medi-Cal Fraud Task Force, and the Bureau of Medi-Cal Fraud and Elder Abuse of the Department of Justice, or their successor entities, adopt protocols, to the extent that these protocols are applicable to achieve the purpose of subdivision (b), similar to those adopted by the Department of Insurance concerning medical billing and provider fraud.

(b) Any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that believes that a fraudulent claim has been made by any person or entity providing medical care, as described in Section 4600, shall report the apparent fraudulent claim in the manner prescribed by subdivision (a).

(c) No insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person that reports any apparent fraudulent claim under this section shall be subject to any civil liability in a cause of action of any kind when the insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person acts in good faith, without malice, and reasonably believes that the action taken was warranted by the known facts, obtained by reasonable efforts. Nothing in this section is intended to, nor does in any manner, abrogate or lessen the existing common law or statutory privileges and immunities of any insurer, self-insured employer, third-party administrator, workers' compensation administrative law judge, audit unit, attorney, or other person.

(Amended by Stats. 2004, Ch. 34, Sec. 11. Effective April 19, 2004.)

Chapter 5. Subrogation of Employer

(Chapter 5 enacted by Stats. 1937, Ch. 90.)

3850. As used in this chapter:

(a) "Employee" includes the person injured and any other person to whom a claim accrues by reason of the injury or death of the former.

(b) "Employer" includes insurer as defined in this division.

(c) "Employer" also includes the Self-Insurers' Security Fund, where the employer's compensation obligations have been assumed pursuant to Section 3743.

(Amended by Stats. 1984, Ch. 252, Sec. 6. Effective June 27, 1984.)

3851. The death of the employee or of any other person, does not abate any right of action established by this chapter.

(Enacted by Stats. 1937, Ch. 90.)

3852. The claim of an employee, including, but not limited to, any peace officer or firefighter, for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer. Any employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation, or who pays or becomes obligated to pay an amount to the Department of Industrial Relations pursuant to Section 4706.5, may likewise make a claim or bring an action against the third person. In the latter event the employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other emolument paid to the employee or to his or her dependents. The respective rights against the third person of the heirs of an employee claiming under Section 377.60 of the Code of Civil Procedure, and an employer claiming pursuant to this section, shall be determined by the court.

(Amended by Stats. 1993, Ch. 589, Sec. 108. Effective January 1, 1994.)

3853. If either the employee or the employer brings an action against such third person, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. Proof of such service shall be filed in such action. If the action is brought by either the employer or employee, the other may, at any time before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

(Amended by Stats. 1980, Ch. 582.)

3854. If the action is prosecuted by the employer alone, evidence of any amount which the employer has paid or become obligated to pay by reason of the injury or death of the employee is admissible, and such expenditures or liability shall be considered as proximately resulting from such injury or death in addition to any other items of damage proximately resulting therefrom.

(Amended by Stats. 1959, Ch. 1255.)

3855. If the employee joins in or prosecutes such action, either the evidence of the amount of disability indemnity or death benefit paid or to be paid by the employer or the evidence of loss of earning capacity by the employee shall be admissible, but not both. Proof of all other items of damage to either the employer

or employee proximately resulting from such injury or death is admissible and is part of the damages.

(Enacted by Stats. 1937, Ch. 90.)

3856. In the event of suit against such third party:

(a) If the action is prosecuted by the employer alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the employer's attorney in effecting recovery both for the benefit of the employer and the employee. After the payment of such expenses and attorney's fees, the court shall apply out of the amount of such judgment an amount sufficient to reimburse the employer for the amount of his expenditure for compensation together with any amounts to which he may be entitled as special damages under Section 3852 and shall order any excess paid to the injured employee or other person entitled thereto.

(b) If the action is prosecuted by the employee alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the employee's attorney in effecting recovery both for the benefit of the employee and the employer. After the payment of such expenses and attorney's fee the court shall, on application of the employer, allow as a first lien against the amount of such judgment for damages, the amount of the employer's expenditure for compensation together with any amounts to which he may be entitled as special damages under Section 3852.

(c) If the action is prosecuted both by the employee and the employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, the court shall first order paid from any judgment for damages recovered, the reasonable litigation expenses incurred in preparation and prosecution of such action or actions, together with reasonable attorneys' fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of such expenses and attorneys' fees the court shall apply out of the amount of such judgment for damages an amount sufficient to reimburse the employer for the amount of his expenditures for compensation together with any other amounts to which he may be entitled as special damages under Section 3852.

(d) The amount of reasonable litigation expenses and the amount of attorneys' fees under subdivisions (a), (b), and (c) of this section shall be fixed by the court. Where the employer and employee are represented by separate attorneys they may propose to the court, for its consideration and determination, the amount and division of such expenses and fees.

(Repealed and added by Stats. 1959, Ch. 1255.)

3857. The court shall, upon further application at any time before the judgment is satisfied, allow as a further lien the amount of any expenditures of the employer for compensation subsequent to the original order.

(Enacted by Stats. 1937, Ch. 90.)

3858. After payment of litigation expenses and attorneys' fees fixed by the court pursuant to Section 3856 and payment of the employer's lien, the employer shall be relieved from the obligation to pay further compensation to or on behalf of the employee under this division up to the entire amount of the balance of the judgment, if satisfied, without any deduction. No satisfaction of such judgment in whole or in part, shall be valid without giving the employer notice and a reasonable opportunity to perfect and satisfy his lien.

(Amended by Stats. 1959, Ch. 1255.)

3859. (a) No release or settlement of any claim under this chapter as to either the employee or the employer is valid without the written consent of both. Proof of service filed with the court is sufficient in any action or proceeding where such approval is required by law.

(b) Notwithstanding anything to the contrary contained in this chapter, an employee may settle and release any claim he may have against a third party without the consent of the employer. Such settlement or release shall be subject to the employer's right to proceed to recover compensation he has paid in accordance with Section 3852.

(Amended by Stats. 1971, Ch. 485.)

3860. (a) No release or settlement under this chapter, with or without suit, is valid or binding as to any party thereto without notice to both the employer and the employee, with opportunity to the employer to recover the amount of compensation he has paid or become obligated to pay and any special damages to which he may be entitled under Section 3852, and opportunity to the employee to recover all damages he has suffered and with provision for determination of expenses and attorney's fees as herein provided.

(b) Except as provided in Section 3859, the entire amount of such settlement, with or without suit, is subject to the employer's full claim for reimbursement for compensation he has paid or become obligated to pay and any special damages to which he may be entitled under Section 3852, together with expenses and attorney fees, if any, subject to the limitations in this section set forth.

(c) Where settlement is effected, with or without suit, solely through the efforts of the employee's attorney, then prior to the reimbursement of the employer, as provided in subdivision (b) hereof, there shall be deducted from the amount of the settlement the reasonable expenses incurred in effecting such settlement, including costs of suit, if any, together with a reasonable attorney's fee to be paid to the employee's attorney, for his services in securing and effecting settlement for the benefit of both the employer and the employee.

(d) Where settlement is effected, with or without suit, solely through the efforts of the employer's attorney, then, prior to the reimbursement of the employer as provided in subdivision (b) hereof, there shall be deducted from the amount of the settlement the reasonable expenses incurred in effecting such settlement, including costs of suit, if any, together with a reasonable attorney's fee to be paid to the employer's attorney, for his services in securing and effecting settlement for the benefit of both the employer and the employee.

(e) Where both the employer and the employee are represented by the same agreed attorney or by separate attorneys in effecting a settlement, with or without suit, prior to reimbursement of the employer, as provided in subdivision (b) hereof, there shall be deducted from the amount of the settlement the reasonable expenses incurred by both the employer and the employee or on behalf of either, including costs of suit, if any, together with reasonable attorneys' fees to be paid to the respective attorneys for the employer and the employee, based upon the respective services rendered in securing and effecting settlement for the

benefit of the party represented. In the event both parties are represented by the same attorney, by agreement, the attorney's fee shall be based on the services rendered for the benefit of both.

(f) The amount of expenses and attorneys' fees referred to in this section shall, on settlement of suit, or on any settlement requiring court approval, be set by the court. In all other cases these amounts shall be set by the appeals board. Where the employer and the employee are represented by separate attorneys they may propose to the court or the appeals board, for consideration and determination, the amount and division of such expenses and fees.

(Amended by Stats. 1971, Ch. 485.)

3861. The appeals board is empowered to and shall allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by the employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys' fees, pursuant to the provisions of Sections 3856, 3858, and 3860 of this code, or has not been applied to reimburse the employer.

(Amended by Stats. 1965, Ch. 1513.)

3862. Any employer entitled to and who has been allowed and has perfected a lien upon the judgment or award in favor of an employee against any third party for damages occasioned to the same employer by payment of compensation, expenses of medical treatment, and any other charges under this act, may enforce payment of the lien against the third party, or, in case the damages recovered by the employee have been paid to the employee, against the employee to the extent of the lien, in the manner provided for enforcement of money judgments generally.

(Amended by Stats. 1982, Ch. 497, Sec. 134. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

3864. If an action as provided in this chapter prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in absence of a written agreement so to do executed prior to the injury.

(Added by Stats. 1959, Ch. 955.)

3865. Any judgment or settlement of an action as provided for in this chapter is, upon notice to the court, subject to the same lien claims of the Employment Development Department as are provided for in Chapter 1 (commencing with Section 4900) of Part 3, and shall be allowed by the court as it determines necessary to avoid a duplication of payment as compensation to the employee for lost earnings.

(Added by Stats. 1989, Ch. 1280, Sec. 1.)

Chapter 7. Medical Examinations

(Chapter 7 enacted by Stats. 1937, Ch. 90.)

4050. Whenever the right to compensation under this division exists in favor of an employee, he shall, upon the written request of his employer, submit at reasonable intervals to examination by a practicing physician, provided and paid for by the employer, and shall likewise submit to examination at reasonable intervals by any physician selected by the administrative director or appeals board or referee thereof.

(Amended by Stats. 1965, Ch. 1513.)

4051. The request or order for the medical examination shall fix a time and place therefor, due consideration being given to the convenience of the employee and his physical condition and ability to attend at the time and place fixed.

(Enacted by Stats. 1937, Ch. 90.)

4052. The employee may employ at his own expense a physician, to be present at any examination required by his employer.

(Enacted by Stats. 1937, Ch. 90.)

4053. So long as the employee, after written request of the employer, fails or refuses to submit to such examination or in any way obstructs it, his right to begin or maintain any proceeding for the collection of compensation shall be suspended.

(Enacted by Stats. 1937, Ch. 90.)

4054. If the employee fails or refuses to submit to examination after direction by the appeals board, or a referee thereof, or in any way obstructs the examination, his right to the disability payments which accrue during the period of such failure, refusal or obstruction, shall be barred.

(Amended by Stats. 1965, Ch. 1513.)

4055. Any physician who makes or is present at any such examination may be required to report or testify as to the results thereof.

(Enacted by Stats. 1937, Ch. 90.)

4055.2. Any party who subpoenas records in any proceeding under this division shall concurrent with service of the subpoena upon the person who has possession of the records, send a copy of the subpoena to all parties of record in the proceeding.

(Amended by Stats. 1999, Ch. 444, Sec. 7. Effective January 1, 2000.)

4056. No compensation is payable in case of the death or disability of an employee when his death is caused, or when and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, if the risk of the treatment is, in the opinion of the appeals board, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

(Amended by Stats. 1965, Ch. 1513.)

Article 2. Determination of Medical Issues

(Article 2 added by Stats. 1989, Ch. 892, Sec. 28.)

4060. (a) This section shall apply to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.

(b) Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible.

(c) If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2.

(d) If a medical evaluation is required to determine compensability at any time after the claim form is filed, and the employee is not represented by an attorney, the employer shall provide the employee with notice either that the employer requests a comprehensive medical evaluation to determine compensability or that the employer has not accepted liability and the employee may request a comprehensive medical evaluation to determine compensability. Either party may request a comprehensive medical evaluation to determine compensability. The evaluation shall be obtained only by the procedure provided in Section 4062.1.

(e) The notice required by subdivision (d) shall be accompanied by the form prescribed by the administrative director for requesting the assignment of a panel of qualified medical evaluators.

(Amended by Stats. 2011, Ch. 544, Sec. 3. Effective January 1, 2012.)

4061. This section shall not apply to the employee's dispute of a utilization review decision under Section 4610, nor to the employee's dispute of the medical provider network treating physician's diagnosis or treatment recommendations under Sections 4616.3 and 4616.4.

(a) Together with the last payment of temporary disability indemnity, the employer shall, in a form prescribed by the administrative director pursuant to Section 138.4, provide the employee one of the following:

(1) Notice either that no permanent disability indemnity will be paid because the employer alleges the employee has no permanent impairment or limitations resulting from the injury or notice of the amount of permanent disability indemnity determined by the employer to be payable. If the employer determines permanent disability indemnity is payable, the employer shall advise the employee of the amount determined payable and the basis on which the determination was made, whether there is need for future medical care, and whether an indemnity payment will be deferred pursuant to paragraph (2) of subdivision (b) of Section 4650.

(2) Notice that permanent disability indemnity may be or is payable, but that the amount cannot be determined because the employee's medical condition is not yet permanent and stationary. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time the necessary evaluation will be performed to determine the existence and extent of permanent impairment and limitations for the purpose of rating permanent disability and to determine whether there will be the need for future medical care, or at which time the employer will advise the employee of the amount of permanent disability indemnity the employer has determined to be payable.

(b) If either the employee or employer objects to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for future medical care, and the employee is represented by an attorney, a medical evaluation to determine permanent disability shall be obtained as provided in Section 4062.2.

(c) If either the employee or employer objects to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for future medical care, and if the employee is not represented by an attorney, the employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. Either party may request a comprehensive medical evaluation to determine permanent disability or the need for future medical care, and the evaluation shall be obtained only by the procedure provided in Section 4062.1.

(d) (1) Within 30 days of receipt of a report from a qualified medical evaluator who has evaluated an unrepresented employee, the unrepresented employee or the employer may each request one supplemental report seeking correction of factual errors in the report. Any of these requests shall be made in writing. A request made by the employer shall be provided to the employee, and a request made by the employee shall be provided to the employer, insurance carrier, or claims administrator at the time the request is sent to the evaluator. A request for correction that is made by the employer shall also inform the employee of the availability of information and assistance officers to assist him or her in responding to the request, if necessary.

(2) The permanent disability rating procedure set forth in subdivision (e) shall not be invoked by the unrepresented employee or the employer when a request for correction pursuant to paragraph (1) is pending.

(e) The qualified medical evaluator who has evaluated an unrepresented employee shall serve the comprehensive medical evaluation and the summary form on the employee, employer, and the administrative director. The unrepresented employee or the employer may submit the treating physician's evaluation for the calculation of a permanent disability rating. Within 20 days of receipt of the comprehensive medical evaluation, the administrative director shall calculate the permanent disability rating according to Section 4660 or 4660.1, as applicable, and serve the rating on the employee and employer.

(f) Any comprehensive medical evaluation concerning an unrepresented employee which indicates that part or all of an employee's permanent impairment or limitations may be subject to apportionment pursuant to Sections 4663 and 4664 shall first be submitted by the administrative director to a workers' compensation judge who may refer the report back to the qualified medical evaluator for correction or clarification if the judge determines the proposed apportionment is inconsistent with the law.

(g) Within 30 days of receipt of the rating, if the employee is unrepresented, the employee or employer may request that the administrative director reconsider the recommended rating or obtain additional information from the treating physician or medical evaluator to address issues not addressed or not completely addressed in the original comprehensive medical evaluation or not prepared in accord with the procedures promulgated under paragraph (2) or (3) of subdivision (j) of Section 139.2. This request shall be in writing, shall specify the reasons the rating should be reconsidered, and shall be served on the other party. If the administrative director finds the comprehensive medical evaluation is not complete or not in compliance with the required procedures, the administrative director shall return the report to the treating physician or qualified medical evaluator for appropriate action as the administrative director instructs. Upon receipt of the treating physician's or qualified medical evaluator's final comprehensive medical evaluation and summary form, the administrative director shall recalculate the permanent disability rating according to Section 4660 or 4660.1, as applicable, and serve the rating, the comprehensive medical evaluation, and the summary form on the employee and employer.

(h) (1) If a comprehensive medical evaluation from the treating physician or an agreed medical evaluator or a qualified medical evaluator selected from a three-member panel resolves any issue so as to require an employer to provide compensation, the employer shall commence the payment of compensation, except as provided pursuant to paragraph (2) of subdivision (b) of Section 4650, or promptly commence proceedings before the appeals board to resolve the dispute.

(2) If the employee and employer agree to a stipulated findings and award as provided under Section 5702 or to compromise and release the claim under Chapter 2 (commencing with Section 5000) of Part 3, or if the employee wishes to commute the award under Chapter 3 (commencing with Section 5100) of Part 3, the appeals board shall first determine whether the agreement or

commutation is in the best interests of the employee and whether the proper procedures have been followed in determining the permanent disability rating. The administrative director shall promulgate a form to notify the employee, at the time of service of any rating under this section, of the options specified in this subdivision, the potential advantages and disadvantages of each option, and the procedure for disputing the rating.

(i) No issue relating to a dispute over the existence or extent of permanent impairment and limitations resulting from the injury may be the subject of a declaration of readiness to proceed unless there has first been a medical evaluation by a treating physician and by either an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations resulting from the injury shall be obtained, except in accordance with Section 4062.1 or 4062.2. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board.

(Amended by Stats. 2013, Ch. 287, Sec. 4. Effective January 1, 2014.)

4061.5. The treating physician primarily responsible for managing the care of the injured worker or the physician designated by that treating physician shall, in accordance with rules promulgated by the administrative director, render opinions on all medical issues necessary to determine eligibility for compensation. In the event that there is more than one treating physician, a single report shall be prepared by the physician primarily responsible for managing the injured worker's care that incorporates the findings of the various treating physicians.

(Added by Stats. 1993, Ch. 121, Sec. 31. Effective July 16, 1993.)

4062. (a) If either the employee or employer objects to a medical determination made by the treating physician concerning any medical issues not covered by Section 4060 or 4061 and not subject to Section 4610, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney. These time limits may be extended for good cause or by mutual agreement. If the employee is represented by an attorney, a medical evaluation to determine the disputed medical issue shall be obtained as provided in Section 4062.2, and no other medical evaluation shall be obtained. If the employee is not represented by an attorney, the employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators, the evaluation shall be obtained as provided in Section 4062.1, and no other medical evaluation shall be obtained.

(b) If the employee objects to a decision made pursuant to Section 4610 to modify, delay, or deny a request for authorization of a medical treatment recommendation made by a treating physician, the objection shall be resolved only in accordance with the independent medical review process established in Section 4610.5.

(c) If the employee objects to the diagnosis or recommendation for medical treatment by a physician within the employer's medical provider network established pursuant to Section 4616, the objection shall be resolved only in accordance with the independent medical review process established in Sections 4616.3 and 4616.4.

(Amended by Stats. 2012, Ch. 363, Sec. 28. Effective January 1, 2013.)

4062.1. (a) If an employee is not represented by an attorney, the employer shall not seek agreement with the employee on an agreed medical evaluator, nor shall an agreed medical evaluator prepare the formal medical evaluation on any issues in dispute.

(b) If either party requests a medical evaluation pursuant to Section 4060, 4061, or 4062, either party may submit the form prescribed by the administrative director requesting the medical director to assign a panel of three qualified medical evaluators in accordance with Section 139.2. However, the employer may not submit the form unless the employee has not submitted the form within 10 days after the employer has furnished the form to the employee and requested the employee to submit the form. The party submitting the request form shall designate the specialty of the physicians that will be assigned to the panel.

(c) Within 10 days of the issuance of a panel of qualified medical evaluators, the employee shall select a physician from the panel to prepare a medical evaluation, the employee shall schedule the appointment, and the employee shall inform the employer of the selection and the appointment. If the employee does not inform the employer of the selection within 10 days of the assignment of a panel of qualified medical evaluators, then the employer may select the physician from the panel to prepare a medical evaluation. If the employee informs the employer of the selection within 10 days of the assignment of the panel but has not made the appointment, or if the employer selects the physician pursuant to this subdivision, then the employer shall arrange the appointment. Upon receipt of written notice of the appointment arrangements from the employee, or upon giving the employee notice of an appointment arranged by the employer, the employer shall furnish payment of estimated travel expense.

(d) The evaluator shall give the employee, at the appointment, a brief opportunity to ask questions concerning the evaluation process and the evaluator's background. The unrepresented employee shall then participate in the evaluation as requested by the evaluator unless the employee has good cause to discontinue the evaluation. For purposes of this subdivision, "good cause" shall include evidence that the evaluator is biased against the employee because of his or her race, sex, national origin, religion, or sexual preference or evidence that the evaluator has requested the employee to submit to an unnecessary medical examination or procedure. If the unrepresented employee declines to proceed with the evaluation, he or she shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a comprehensive medical evaluation. If the appeals board subsequently determines that the employee did not have good cause to not proceed with the evaluation, the cost of the evaluation shall be deducted from any award the employee obtains.

(e) If an employee has received a comprehensive medical-legal evaluation under this section, and he or she later becomes represented by an attorney, he or she shall not be entitled to an additional evaluation.

(Amended by Stats. 2004, Ch. 34, Sec. 16. Effective April 19, 2004.)

4062.2. (a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.

(b) No earlier than the first working day that is at least 10 days after the date of mailing of a request for a medical evaluation pursuant to Section 4060 or the first working day that is at least 10 days after the date of mailing of an objection pursuant to Sections 4061 or 4062, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the

request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

(c) Within 10 days of assignment of the panel by the administrative director, each party may strike one name from the panel. The remaining qualified medical evaluator shall serve as the medical evaluator. If a party fails to exercise the right to strike a name from the panel within 10 days of assignment of the panel by the administrative director, the other party may select any physician who remains on the panel to serve as the medical evaluator. The administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection process.

(d) The represented employee shall be responsible for arranging the appointment for the examination, but upon his or her failure to inform the employer of the appointment within 10 days after the medical evaluator has been selected, the employer may arrange the appointment and notify the employee of the arrangements. The employee shall not unreasonably refuse to participate in the evaluation.

(e) If an employee has received a comprehensive medical-legal evaluation under this section, and he or she later ceases to be represented, he or she shall not be entitled to an additional evaluation.

(f) The parties may agree to an agreed medical evaluator at any time, except as to issues subject to the independent medical review process established pursuant to Section 4610.5. A panel shall not be requested pursuant to subdivision (b) on any issue that has been agreed to be submitted to or has been submitted to an agreed medical evaluator unless the agreement has been canceled by mutual written consent.

(Amended by Stats. 2012, Ch. 363, Sec. 29. Effective January 1, 2013.)

4062.3. (a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(b) Information that a party proposes to provide to the qualified medical evaluator selected from a panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

(c) If an agreed medical evaluator is selected, as part of their agreement on an evaluator, the parties shall agree on what information is to be provided to the agreed medical evaluator.

(d) In any formal medical evaluation, the agreed or qualified medical evaluator shall identify the following:

(1) All information received from the parties.

(2) All information reviewed in preparation of the report.

(3) All information relied upon in the formulation of his or her opinion.

(e) All communications with a qualified medical evaluator selected from a panel before a medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

(f) Communications with an agreed medical evaluator shall be in writing, and shall be served on the opposing party when sent to the agreed medical evaluator. Oral or written communications with physician staff or, as applicable, with the agreed medical evaluator, relative to nonsubstantial matters such as the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, do not constitute ex parte communication in violation of this section unless the appeals board has made a specific finding of an impermissible ex parte communication.

(g) Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected from a panel is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to Section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation.

(h) The party making the communication prohibited by this section shall be subject to being charged with contempt before the appeals board and shall be liable for the costs incurred by the aggrieved party as a result of the prohibited communication, including the cost of the medical evaluation, additional discovery costs, and attorney's fees for related discovery.

(i) Subdivisions (e) and (g) shall not apply to oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination.

(j) Upon completing a determination of the disputed medical issue, the medical evaluator shall summarize the medical findings on a form prescribed by the administrative director and shall serve the formal medical evaluation and the summary form on the employee and the employer. The medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator.

(k) If, after a medical evaluation is prepared, the employer or the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.

(l) No disputed medical issue specified in subdivision (a) may be the subject of declaration of readiness to proceed unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator.

(Amended by Stats. 2012, Ch. 363, Sec. 30. Effective January 1, 2013.)

4062.5. If a qualified medical evaluator selected from a panel fails to complete the formal medical evaluation within the timeframes established by the administrative director pursuant to paragraph (1) of subdivision (j) of Section 139.2, a new evaluation may be obtained upon the request of either party, as provided in Sections 4062.1 or 4062.2. Neither the employee nor the employer shall have any liability for payment for the formal medical evaluation which was not completed within the required timeframes unless the employee or employer, on forms prescribed by the administrative director, each waive the right to a new evaluation and elects to accept the original evaluation even though it was not completed within the required timeframes.

(Amended by Stats. 2004, Ch. 34, Sec. 20. Effective April 19, 2004.)

4062.8. The administrative director shall develop, not later than January 1, 2004, and periodically revise as necessary thereafter, educational materials to be used to provide treating physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, with information and training in basic concepts of workers' compensation, the role of the treating physician, the conduct of permanent and stationary evaluations, and report writing, as appropriate.

(Added by Stats. 2004, Ch. 34, Sec. 21. Effective April 19, 2004.)

4063. If a formal medical evaluation from an agreed medical evaluator or a qualified medical evaluator selected from a three member panel resolves any issue so as to require an employer to provide compensation, the employer shall, except as provided pursuant to paragraph (2) of subdivision (b) of Section 4650, commence the payment of compensation or file a declaration of readiness to proceed.

(Amended by Stats. 2012, Ch. 363, Sec. 31. Effective January 1, 2013.)

4064. (a) The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062. Each comprehensive medical-legal evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms, except medical treatment recommendations, which are subject to utilization review as provided by Section 4610, and objections to utilization review determinations, which are subject to independent medical review as provided by Section 4610.5.

(b) For injuries occurring on or after January 1, 2003, if an unrepresented employee obtains an attorney after the evaluation pursuant to subdivision (d) of Section 4061 or subdivision (b) of Section 4062 has been completed, the employee shall be entitled to the same reports at employer expense as an employee who has been represented from the time the dispute arose and those reports shall be admissible in any proceeding before the appeals board.

(c) Subject to Section 4906, if an employer files a declaration of readiness to proceed and the employee is unrepresented at the time the declaration of readiness to proceed is filed, the employer shall be liable for any attorney's fees incurred by the employee in connection with the declaration of readiness to proceed.

(d) The employer shall not be liable for the cost of any comprehensive medical evaluations obtained by the employee other than those authorized pursuant to Sections 4060, 4061, and 4062. However, no party is prohibited from obtaining any medical evaluation or consultation at the party's own expense. In no event shall an employer or employee be liable for an evaluation obtained in violation of subdivision (b) of Section 4060. All comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in Section 4060, 4061, 4062, 4062.1, or 4062.2.

(Amended by Stats. 2012, Ch. 363, Sec. 32. Effective January 1, 2013.)

4067. If the jurisdiction of the appeals board is invoked pursuant to Section 5803 upon the grounds that the effects of the injury have recurred, increased, diminished, or terminated, a formal medical evaluation shall be obtained pursuant to this article.

When an agreed medical evaluator or a qualified medical evaluator selected by an unrepresented employee from a three-member panel has previously made a formal medical evaluation of the same or similar issues, the subsequent or additional formal medical evaluation shall be conducted by the same agreed medical evaluator or qualified medical evaluator, unless the workers' compensation judge has made a finding that he or she did not rely on the prior evaluator's formal medical evaluation, any party contested the original medical evaluation by filing an application for adjudication, the unrepresented employee hired an attorney and selected a qualified medical evaluator to conduct another evaluation pursuant to subdivision (b) of Section 4064, or the prior evaluator is no longer qualified or readily available to prepare a formal medical evaluation, in which case Sections 4061 or 4062, as the case may be, shall apply as if there had been no prior formal medical evaluation.

(Amended by Stats. 2002, Ch. 6, Sec. 56. Effective January 1, 2003.)

4067.5. This article shall become operative for injuries occurring on and after January 1, 1991.

(Amended (as added by Stats. 1989, Ch. 892) by Stats. 1990, Ch. 1550, Sec. 28. Note: This section provides for delayed operation of Article 2, commencing with Section 4060.)

4068. (a) Upon determining that a treating physician's report contains opinions that are the result of conjecture, are not supported by adequate evidence, or that indicate bias, the appeals board shall so notify the administrative director in writing in a manner he or she has specified.

(b) If the administrative director believes that any treating physician's reports show a pattern of unsupported opinions, he or she shall notify in writing the physician's applicable licensing body of his or her findings.

(Amended by Stats. 2003, Ch. 639, Sec. 22. Effective January 1, 2004.)

Chapter 8. Election to Be Subject to Compensation Liability

(Chapter 8 enacted by Stats. 1937, Ch. 90.)

4150. When an employer has in his employment any person not included within the term "employee" as defined by Article 2 of Chapter 2 of Part 1 of this division or a person not entitled to compensation under this division, such employer and such person employed by him may, by their joint election, come under the compensation provisions of this division in the manner hereinafter provided.

(Enacted by Stats. 1937, Ch. 90.)

4151. Election on the part of the employer shall be made in one of the following ways:

(a) By insuring against liability for compensation, in which case he is deemed, as to all persons employed by him and covered by insurance, to have so elected during the period such insurance remains in force.

(b) By filing with the administrative director a statement to the effect that he accepts the compensation provisions of this division.

(Amended by Stats. 1965, Ch. 1513.)

4152. The statement, when filed, shall operate, within the meaning of Chapter 3 (commencing with Section 3600), to subject him or her to the compensation provisions thereof for the term of one year from the date of filing. Thereafter, without further act on his or her part, he or she shall be so subject for successive terms of one year each, unless at least 60 days prior to the expiration of such first or succeeding year, he or she files with the administrative director a notice that he or she withdraws his or her election.

(Amended by Stats. 1982, Ch. 454, Sec. 136.)

4153. Such statement of acceptance includes persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer, unless expressly excluded therefrom.

(Enacted by Stats. 1937, Ch. 90.)

4154. Where any employer has made an election in either of the modes above prescribed, any person in his service is deemed to have accepted the compensation provisions of this division if, at the time of the injury for which liability is claimed:

(a) Such employer is subject to the compensation provisions of this division and;

(b) Such person in his service has not, either upon entering into the employment, or within five days after the filing of an election by the employer, given to such employer notice in writing that he elects not to be subject to the compensation provisions of this division.

In case of such acceptance, the person employed becomes subject to the compensation provisions at the time of the filing of the election or entry in the employment.

(Enacted by Stats. 1937, Ch. 90.)

4155. The State and each county, city, district, and public agency thereof and all State institutions are conclusively presumed to have elected to come within the provisions of this division as to all employments otherwise excluded from this division.

(Enacted by Stats. 1937, Ch. 90.)

4156. No liability for compensation shall attach to any employer of a person excluded by subdivision (h) of Section 3352 from the definition of "employee" for an injury to or the death of a person so excluded which occurs on or after the effective date of this section if such employer elected to come under the compensation provisions of this division pursuant to subdivision (a) of Section 4151 prior to the effective date of this section by purchasing or renewing a policy providing comprehensive personal liability insurance containing a provision for coverage against liability for the payment of compensation, as defined in Section 3207 of the Labor Code, to any person defined as an employee by subdivision (d) of Section 3351 of the Labor Code; provided, however, nothing in this section shall prohibit an employer from providing compensation pursuant to the provisions of this chapter.

(Added by Stats. 1977, Ch. 17.)

4157. Where any employer has made an election pursuant to this chapter to include under the compensation provisions of this division an independent contractor engaged in vending, selling, offering for sale, or delivering directly to the public any newspaper, magazine, or periodical, the status of such person as an independent contractor for all other purposes shall not be affected by such election.

(Added by Stats. 1978, Ch. 672.)

Chapter 9. Economic Opportunity Programs

(Chapter 9 added by Stats. 1965, Ch. 1685.)

Article 1. General Provisions

(Article 1 added by Stats. 1965, Ch. 1685.)

4201. It is the intent of this chapter to apply to all enrollees in economic opportunity programs, including, but not limited to, work training or work study authorized by or financed in whole or in part through provisions of Public Law 88-452 (Economic Opportunity Act of 1964).

(Added by Stats. 1965, Ch. 1685.)

4202. "Economic Opportunity Program" means any program adopted pursuant to Public Law 88-452, including, but not limited to, work training and work study.

(Added by Stats. 1965, Ch. 1685.)

4203. "Enrollee" means any person enrolled in an economic opportunity program.

(Added by Stats. 1965, Ch. 1685.)

4204. "Sponsoring agency" means any agency, entity, or institution, public or private, receiving grants or financial assistance, either directly or as a subcontractor, pursuant to Public Law 88-452.

(Added by Stats. 1965, Ch. 1685.)

4205. "Participating agency" means any agency, entity or institution, public or private, taking part in an economic opportunity program, other than a sponsoring agency.

(Added by Stats. 1965, Ch. 1685.)

4206. Except as provided in this chapter, an enrollee within a given economic opportunity program shall have no right to receive compensation from sponsoring or participating agencies, entities, and institutions, public or private.

(Added by Stats. 1965, Ch. 1685.)

4207. Compensation shall be furnished an enrollee for injury or to dependents if injury causes death, suffered within or without the state occurring in the course of his duties for a sponsoring agency within an economic opportunity program if the following conditions occur:

(a) Where, at the time of injury, the enrollee is performing services and is acting within the scope of his duties as a recipient of aid within an economic opportunity program.

(b) Where injury is proximately caused by his service as an enrollee within an economic opportunity program either with or without negligence.

(c) Where injury is not caused by the intoxication of the injured enrollee.

(d) Where the injury is not intentionally self-inflicted.

(Added by Stats. 1965, Ch. 1685.)

4208. Where the conditions of compensation exist, the right to recover such compensation pursuant to the provisions of this chapter is the exclusive remedy for injury or death of an enrollee against the sponsoring agency, or the participating agency.

(Added by Stats. 1965, Ch. 1685.)

4209. Insofar as not inconsistent with the provisions of this chapter, all of the provisions of this division shall pertain to enrollees and their dependents and the furnishing of compensation benefits thereto.

(Added by Stats. 1965, Ch. 1685.)

Article 2. Benefits

(Article 2 added by Stats. 1965, Ch. 1685.)

4211. Where liability for compensation exists, such compensation shall be provided as limited by this chapter.

(Added by Stats. 1965, Ch. 1685.)

4212. If an enrollee suffers injury or death in the performance of his duties under an economic opportunity program, then, irrespective of his remuneration from this or other employment, his average weekly earnings for the purpose of determining temporary and permanent disability indemnity shall be determined in accordance with Section 4453, provided that for the purpose of this chapter only, there shall be no statutory minimum average weekly earnings for temporary disability indemnity. If the injury sustained by an enrollee causes death, death benefits shall be determined in accordance with Sections 4701 and 4702 of this code.

(Added by Stats. 1965, Ch. 1685.)

4213. If the injury sustained by an enrollee causes permanent disability, the percentage of disability to total disability shall

be determined for the occupation of a laborer of like age by applying the schedule for the determination of the percentage of permanent disabilities prepared and adopted by the appeals board.

(Amended by Stats. 1967, Ch. 1364.)

4214. In addition to death benefit in the event of fatal injury, the reasonable expenses of the enrollee's burial shall be paid not to exceed six hundred dollars ($600).

(Added by Stats. 1965, Ch. 1685.)

Article 3. Adjustment of Claims

(Article 3 added by Stats. 1965, Ch. 1685.)

4226. Should the United States government or any agent thereof, pursuant to federal statute, rule or regulations furnish benefits to enrollees or dependents of enrollees under an economic opportunity program, then the amount of indemnity which an enrollee or his dependents are entitled to receive under this chapter shall be reduced by the amount of monetary benefits the enrollee or his dependents have and will receive from the above source as a result of injury.

(Added by Stats. 1965, Ch. 1685.)

4227. If the United States government or any agent thereof furnishes medical treatment to an injured enrollee, the enrollee will have no right to receive the same or similar treatment under this chapter.

(Added by Stats. 1965, Ch. 1685.)

4228. If the furnishing of medical treatment by the United States government or its agent takes the form of reimbursement of the enrollee, he shall have no right to receive the same or similar treatment under this chapter.

(Added by Stats. 1965, Ch. 1685.)

4229. If the furnishing of compensation benefits to an enrollee or his dependents under this chapter prevents such enrollee or his dependents from receiving benefits under the provisions of federal statute, rule or regulations, then the enrollee or his dependents shall have no right and shall not receive compensation benefits under this chapter.

(Added by Stats. 1965, Ch. 1685.)

Chapter 10. Disaster Service Workers

(Heading of Chapter 10 renumbered from Chapter 10.5 by Stats. 1951, Ch. 1440.)

4350. The Office of Emergency Services shall administer this chapter as it relates to volunteer disaster service workers.

(Amended by Stats. 2013, Ch. 352, Sec. 401. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

4351. Compensation provided by this division is the exclusive remedy of a disaster service worker, or his or her dependents, for injury or death arising out of, and in the course of, his or her activities as a disaster service worker as against the state, the disaster council with which he or she is registered, and the county or city which has empowered the disaster council to register and direct his or her activities. Liability for compensation provided by this division is in lieu of any other liability whatsoever to a disaster service worker or his or her dependents or any other person on his or her behalf against the state, the disaster council with which the disaster service worker is registered, and the county or city which has empowered the disaster council to register and direct his or her activities, for any injury or death arising out of, and in the course of, his or her activities as a disaster service worker.

(Repealed and added by Stats. 1986, Ch. 554, Sec. 3.)

4352. (a) No compensation shall be paid or furnished to a disaster service worker or a dependent of a disaster service worker pursuant to this division absent an initial appropriation of funds for the purpose of furnishing compensation to a disaster service worker or a dependent of a disaster service worker. Liability for the initial payment or furnishing of compensation is dependent upon and limited to the availability of money so appropriated.

(b) Notwithstanding subdivision (a), when appropriated funds are temporarily unavailable for disbursement, the State Compensation Insurance Fund may provide compensation to an eligible claimant under this section whose injuries have previously either been accepted or found to be compensable by the Workers' Compensation Appeals Board.

(1) Compensation to, and benefits for, an eligible claimant provided for under this subdivision may include the issuance of checks by the State Compensation Insurance Fund.

(2) Within 30 days of the date funds that had been temporarily unavailable are appropriated, and therefore become available, the California Emergency Management Agency shall reimburse the State Compensation Insurance Fund for compensation paid to, or benefits paid for, a claimant pursuant to paragraph (1), in addition to any applicable interest, service fees, or charges.

(c) After all money appropriated as described in subdivision (a) is expended or set aside in bookkeeping reserves for the payment or furnishing of compensation and reimbursing the State Compensation Insurance Fund for its services, the payment or furnishing of compensation for an injury to a disaster service worker or his or her dependents is dependent upon there having been a reserve set up for the payment or furnishing of compensation to that disaster service worker or his or her dependents and for that injury, and liability is limited to the amount of the reserve. The excess in a reserve for the payment or furnishing of compensation or for reimbursing the State Compensation Insurance Fund for its compensation payments and services may be transferred to reserves of other disaster service workers for the payment or furnishing of compensation and reimbursing the State Compensation Insurance Fund, or may be used to set up reserves for other disaster service workers.

(Amended by Stats. 2009, 4th Ex. Sess., Ch. 12, Sec. 25. Effective July 28, 2009.)

4353. If a disaster service worker suffers injury or death while in the performance of duties as a disaster service worker, then, irrespective of his or her remuneration from this or other employment or from both, the average weekly earnings for the purposes of determining temporary and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453.

(Repealed and added by Stats. 1986, Ch. 554, Sec. 3.)

4354. If the injury sustained by a disaster service worker causes permanent disability, the percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director. The amount of the weekly payment for permanent disability shall be the same as the weekly benefit which would be paid for temporary total disability pursuant to Section 4353.

(Repealed and added by Stats. 1986, Ch. 554, Sec. 3.)

4355. (a) Should the United States Government or any agent thereof, in accordance with any federal statute, rule, or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to disaster service workers or to disaster service workers and their dependents for injuries arising out of and occurring in the course of their activities as disaster service

workers, the amount of compensation that any disaster service worker or his or her dependents are otherwise entitled to receive from the State of California under this division for any injury shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the disaster service worker or his or her dependents have received and will receive from the United States or any agent thereof as a result of the injury.

(b) If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States Government or any agent thereof furnishes medical, surgical, or hospital treatment, or any combination thereof, to an injured disaster service worker, the disaster service worker has no right to receive similar medical, surgical, or hospital treatment under this division.

(c) If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States Government or any agent thereof will reimburse a disaster service worker or his or her dependents for medical, surgical, or hospital treatment, or any combination thereof, furnished to the injured disaster service worker, the disaster service worker has no right to receive similar medical, surgical, or hospital treatment under this division.

(d) If the furnishing of compensation under this division to a disaster service worker or his or her dependents prevents the disaster service worker or his or her dependents from receiving assistance, benefits, or other temporary or permanent relief under a federal statute, rule, regulation, the disaster service worker and his or her dependents shall have no right to, and may not receive, any compensation from the State of California under this division for any injury for which the United States Government or any agent thereof will furnish assistance, benefits, or other temporary or permanent relief in the absence of the furnishing of compensation by the State of California.

(Added by Stats. 2003, Ch. 228, Sec. 34. Effective August 11, 2003.)

Chapter 11. Asbestos Workers' Account

(Chapter 11 added by Stats. 1980, Ch. 1041.)

Article 1. General Provisions

(Article 1 added by Stats. 1980, Ch. 1041.)

4401. It is the declared policy of the state that qualified injured workers with asbestosis which arises out of and occurs in the course of employment shall receive workers' compensation asbestos workers' benefits promptly and not be subjected to delays of litigation to determine the responsible employer.

(Amended by Stats. 1982, Ch. 1077, Sec. 1. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4402. (a) "Asbestosis" means any pathology, whether or not combined with preexisting pathology, which results in disability or need for medical treatment from inhalation of asbestos fibers.

(b) "Asbestos worker" means any person whose occupation subjected him or her to an exposure to asbestos fibers.

(c) "Asbestos workers' benefits" means temporary total disability benefits, permanent total disability benefits, death benefits, and medical benefits.

(d) "Dependents" means, and is limited to, a surviving spouse who at the time of injury was dependent on the deceased asbestos worker for half or more of his or her support, and minor children of the deceased asbestos worker.

(Amended by Stats. 1982, Ch. 1077, Sec. 1.5. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4403. The Asbestos Workers' Account is hereby created in the Uninsured Employers Fund in the State Treasury, and shall be administered by the Director of Industrial Relations. The money in the Asbestos Workers' Account is hereby continuously appropriated for the purposes of this chapter, and to pay the expenses of the director in administering these provisions.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4404. Insofar as not inconsistent with the provisions of this chapter, all of the provisions of this division shall pertain to asbestos workers and their dependents for purposes of furnishing workers' compensation asbestos workers' benefits thereto.

(Amended by Stats. 1982, Ch. 1077, Sec. 2. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4405. Where the conditions of compensation exist under this division the right to recover workers' compensation asbestos workers' benefits pursuant to the provisions of this chapter is a temporary remedy for injury to an asbestos worker against the Asbestos Workers' Account, and such asbestos worker or his or her dependents shall make all reasonable effort to establish the identity of the employer responsible for securing the payment of compensation.

(Amended by Stats. 1982, Ch. 1077, Sec. 3. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4406. (a) Payments as advances on workers' compensation asbestos workers' benefits shall be furnished an asbestos worker for injury resulting in asbestosis, or the dependents of the asbestos worker in the case of his or her death due to asbestosis, subject to the provisions of this division, if all of the following conditions occur:

(1) The asbestos worker demonstrates to the account that at the time of exposure, the asbestos worker was performing services and was acting within the scope of his or her duties in an occupation that subjected the asbestos worker to the exposure to asbestos.

(2) The asbestos worker demonstrates to the account that he or she is suffering from asbestosis.

(3) The asbestos worker demonstrates to the account that he or she developed asbestosis from the employment.

(4) The asbestos worker is entitled to compensation for asbestosis as otherwise provided for in this division.

(b) The findings of the account with regard to the conditions in subdivision (a) shall not be evidence in any other proceeding.

(c) The account shall require the asbestos worker to submit to an independent medical examination unless the information and assistance officer, in consultation with the medical director or his or her designee, determines that there exists adequate medical evidence that the worker developed asbestosis from the employment.

(Amended by Stats. 1982, Ch. 1077, Sec. 4. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

Article 2. Benefits

(Article 2 added by Stats. 1980, Ch. 1041.)

4407. When the account determines that the conditions in Section 4406 have occurred, payments as advances on workers' compensation asbestos workers' benefits shall be provided in accordance with this chapter, notwithstanding the right of the asbestos worker to secure compensation as otherwise provided for in this division.

(Amended by Stats. 1982, Ch. 1077, Sec. 5. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4407.3. For purposes of this chapter, the death benefit shall be paid in installments in the same manner and amounts as temporary disability indemnity.

(Added by Stats. 1982, Ch. 1077, Sec. 6. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4407.5. Benefits provided by this chapter shall not be commuted into a lump-sum payment.

(Added by Stats. 1982, Ch. 1077, Sec. 7. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4408. Prior to seeking compensation benefits under this chapter, the asbestos worker shall first make claim on the employer or its workers' compensation insurance carrier for payment of compensation under this division. If the asbestos worker is unable to locate the responsible employer or insurance carrier, or if the employer or insurance carrier fails to pay or denies liability for the compensation required by this division to the person entitled thereto, within a period of 30 days after the assertion of such a claim, the asbestos worker may seek payment of workers' compensation asbestos workers' benefits required by this division from the Asbestos Workers' Account.

(Amended by Stats. 1982, Ch. 1077, Sec. 8. Effective September 15, 1982. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4409. The Director of Industrial Relations, or his or her representative, shall assign investigative and claims adjustment services respecting matters concerning Asbestos Workers' Account cases. Those assignments may be made within the department, including the Division of Workers' Compensation, and excluding the State Compensation Insurance Fund.

(Amended by Stats. 1994, Ch. 1097, Sec. 13. Effective January 1, 1995. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4409.5. The administrative director shall appoint workers' compensation judges and support staff who shall give priority to the processing of the claims of asbestos workers.

(Amended by Stats. 1985, Ch. 326, Sec. 12. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4410. The administrative director shall appoint at least two information and assistance officers who shall give priority to assisting asbestos workers pursuant to the provisions of this chapter. The information and assistance officer shall assist to the fullest extent possible any asbestos worker seeking benefits under this chapter. In assisting the asbestos worker, the information and assistance officer shall conduct necessary investigation and procure those records, reports, and information which are necessary to the early identification of responsible employers and insurance carriers, and to facilitate in the expediting of payments of benefits that may be due under this division.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4411. (a) When a claim is made against the Asbestos Workers' Account, the account shall secure appropriate information, adjust the claim, and pay benefits provided by this chapter in accordance with the provisions of this division.

(b) The asbestos worker shall, prior to the first payment of benefits by the Asbestos Workers' Account, file an application before the Workers' Compensation Appeals Board to determine the responsible employer for payment of compensation under this division.

(c) In every case before the Workers' Compensation Appeals Board in which a claim of injury from exposure to asbestos is alleged, the appeals board shall join the Asbestos Workers' Account as a party to the proceeding and serve the fund with copies of all decisions and orders, including findings and awards, and order approving compromise and release.

(d) Once a decision establishing the responsible employer or insurance carrier is agreed upon between the parties, or is issued by the Workers' Compensation Appeals Board, and becomes final, the Asbestos Workers' Account shall terminate payment of compensation benefits, notify all interested parties accordingly, and seek collection as provided for under this chapter. Responsibility for payment of all future compensation benefits shall be in accordance with such agreement, order, or decision.

(e) The account shall terminate the payment of benefits to any employee who fails to cooperate fully in determining the responsible employer or insurance carrier.

(f) The Asbestos Workers' Account may, at any time, commence or join in proceedings before the Workers' Compensation Appeals Board by filing an application on its own behalf. In any case in which the Asbestos Workers' Account has been joined as a party or has filed an application on its own behalf, the Asbestos Workers' Account shall have all of the rights and privileges of a party applicant.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

Article 3. Collections

(Article 3 added by Stats. 1980, Ch. 1041.)

4412. The Asbestos Workers' Account shall take all reasonable and appropriate action to insure that recovery is made by the account for all moneys paid as compensation benefits and as costs.

In the event that the responsible employer is uninsured, the account shall not be entitled to reimbursement from the Uninsured Employers Fund.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4413. No limitation of time provided by this division shall run against the Asbestos Workers' Account to initiate proceedings before the Workers' Compensation Appeals Board when the account has made any payment of moneys, incurred any costs for services, or encumbered any liability of the account.

(Amended by Stats. 1982, Ch. 454, Sec. 138. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4414. Immediately following the receipt of knowledge of initiation of proceedings before the Workers' Compensation Appeals Board, or any other jurisdiction providing benefits for the same injury, the Asbestos Workers' Account shall file a lien and may invoke such other remedies as are available to recover moneys expended for compensation benefits.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4415. In any hearing or proceeding, the Director of Industrial Relations may use attorneys from within the department, or the Attorney General, to represent the director and the state.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4416. Once an agreement as to the responsible employer is reached, or a decision is issued by the Workers' Compensation Appeals Board and becomes final, the Asbestos Workers' Account shall notify the responsible employer or insurance carrier of the amount of payment necessary to satisfy the lien in full. Full payment of the lien shall be made by the responsible employer or insurance carrier within 30 days of the issue of such notification. The account may grant a reasonable extension of time for payment

of the lien beyond 30 days. This payment shall be for all moneys expended for compensation benefits, and for all recoverable costs including the cost of independent medical examination and all costs reasonably incidental thereto, including, but not limited to, costs of transportation, hospitalization, consultative evaluation, X-rays, laboratory tests, and other diagnostic procedures. The payment shall bear interest, as provided in Section 5800, from the date of the agreement or decision through the date of payment.

The lien of the Asbestos Workers' Account shall be allowed as a first lien against compensation, and shall have priority over all other liens. The lien of the Asbestos Workers' Account may not be reduced by the Workers' Compensation Appeals Board or by the parties unless express written consent to the proposed reduction of the lien is given by the Asbestos Workers' Account and is filed in the record of proceedings before the Workers' Compensation Appeals Board.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4417. Nothing in this chapter shall be construed to preclude the filing by an asbestos worker of a claim or suit for damages or indemnity against any person other than his or her employer. The Asbestos Workers' Account shall be entitled to recover from, and shall have a first lien against, any amount which is recoverable by the injured employee pursuant to civil judgment or settlement in relation to a claim for damages or indemnity for the effect of exposure to asbestos, for all compensation benefits paid to the injured employee by the Asbestos Workers' Account which have not previously been recovered from the responsible employer or employers by the Asbestos Workers' Account. Recovery by the Asbestos Workers' Account pursuant to the provisions of this section shall not have the effect of extinguishing or diminishing the liability of the responsible employer or employers to the injured employee for compensation payable under the provisions of this division.

(Added by Stats. 1980, Ch. 1041. Provisions inoperative January 1, 1989, as prescribed in Section 4418.)

4418. The provisions of this chapter providing for the payment of workers' compensation asbestos workers' benefits from the Asbestos Workers' Account shall be operative only until January 1, 1989, and as of that date all payments from the fund shall be terminated, and the state shall have no further obligation to pay asbestos workers' benefits, unless a later enacted statute which is chaptered before January 1, 1989, deletes or extends that date. However, if no statute is enacted to delete or extend that date prior to January 1, 1989, the authority of the Asbestos Workers' Account under this chapter to recover the benefits and costs paid to asbestos workers prior to that date shall continue until the benefits and costs have been recovered.

(Amended by Stats. 1985, Ch. 1156, Sec. 4. Note: Termination provisions apply to Chapter 11, commencing with Section 4401.)

Part 2. Computation Of Compensation

(Part 2 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Average Earnings

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

4451. Average annual earnings shall be taken as fifty-two times the average weekly earnings referred to in this chapter.

(Enacted by Stats. 1937, Ch. 90.)

4452. Four times the average annual earnings shall be taken at not less than four thousand eight hundred dollars and sixty-four cents ($4,800.64) nor more than fifteen thousand two hundred dollars and sixty-four cents ($15,200.64) in disability cases, and in death cases shall be taken at not less than the minimum nor more than the maximum limits as provided in Section 4702 of this code.

(Amended by Stats. 1957, Ch. 1996.)

4452.5. As used in this division:

(a) "Permanent total disability" means a permanent disability with a rating of 100 percent permanent disability only.

(b) "Permanent partial disability" means a permanent disability with a rating of less than 100 percent permanent disability.

(Added by Stats. 1973, Ch. 1023.)

4453. (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:

(1) Not less than one hundred twenty-six dollars ($126) nor more than two hundred ninety-four dollars ($294), for injuries occurring on or after January 1, 1983.

(2) Not less than one hundred sixty-eight dollars ($168) nor more than three hundred thirty-six dollars ($336), for injuries occurring on or after January 1, 1984.

(3) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and, for temporary disability, not less than the lesser of one hundred sixty-eight dollars ($168) or 1.5 times the employee's average weekly earnings from all employers, but in no event less than one hundred forty-seven dollars ($147), nor more than three hundred ninety-nine dollars ($399), for injuries occurring on or after January 1, 1990.

(4) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than five hundred four dollars ($504), for injuries occurring on or after January 1, 1991.

(5) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than six hundred nine dollars ($609), for injuries occurring on or after July 1, 1994.

(6) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than six hundred seventy-two dollars ($672), for injuries occurring on or after July 1, 1995.

(7) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than seven hundred thirty-five dollars ($735), for injuries occurring on or after July 1, 1996.

(8) Not less than one hundred eighty-nine dollars ($189), nor more than nine hundred three dollars ($903), for injuries occurring on or after January 1, 2003.

(9) Not less than one hundred eighty-nine dollars ($189), nor more than one thousand ninety-two dollars ($1,092), for injuries occurring on or after January 1, 2004.

(10) Not less than one hundred eighty-nine dollars ($189), nor more than one thousand two hundred sixty dollars ($1,260),

for injuries occurring on or after January 1, 2005. For injuries occurring on or after January 1, 2006, average weekly earnings shall be taken at not less than one hundred eighty-nine dollars ($189), nor more than one thousand two hundred sixty dollars ($1,260) or 1.5 times the state average weekly wage, whichever is greater. Commencing on January 1, 2007, and each January 1 thereafter, the limits specified in this paragraph shall be increased by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year. For purposes of this paragraph, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

(b) In computing average annual earnings for purposes of permanent partial disability indemnity, except as provided in Section 4659, the average weekly earnings shall be taken at:

(1) Not less than seventy-five dollars ($75), nor more than one hundred ninety-five dollars ($195), for injuries occurring on or after January 1, 1983.

(2) Not less than one hundred five dollars ($105), nor more than two hundred ten dollars ($210), for injuries occurring on or after January 1, 1984.

(3) When the final adjusted permanent disability rating of the injured employee is 15 percent or greater, but not more than 24.75 percent: (A) not less than one hundred five dollars ($105), nor more than two hundred twenty-two dollars ($222), for injuries occurring on or after July 1, 1994; (B) not less than one hundred five dollars ($105), nor more than two hundred thirty-one dollars ($231), for injuries occurring on or after July 1, 1995; (C) not less than one hundred five dollars ($105), nor more than two hundred forty dollars ($240), for injuries occurring on or after July 1, 1996.

(4) When the final adjusted permanent disability rating of the injured employee is 25 percent or greater, not less than one hundred five dollars ($105), nor more than two hundred twenty-two dollars ($222), for injuries occurring on or after January 1, 1991.

(5) When the final adjusted permanent disability rating of the injured employee is 25 percent or greater but not more than 69.75 percent: (A) not less than one hundred five dollars ($105), nor more than two hundred thirty-seven dollars ($237), for injuries occurring on or after July 1, 1994; (B) not less than one hundred five dollars ($105), nor more than two hundred forty-six dollars ($246), for injuries occurring on or after July 1, 1995; and (C) not less than one hundred five dollars ($105), nor more than two hundred fifty-five dollars ($255), for injuries occurring on or after July 1, 1996.

(6) When the final adjusted permanent disability rating of the injured employee is less than 70 percent: (A) not less than one hundred fifty dollars ($150), nor more than two hundred seventy-seven dollars and fifty cents ($277.50), for injuries occurring on or after January 1, 2003; (B) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than three hundred dollars ($300), for injuries occurring on or after January 1, 2004; (C) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than three hundred thirty dollars ($330), for injuries occurring on or after January 1, 2005; and (D) not less than one hundred ninety-five dollars ($195), nor more than three hundred forty-five dollars ($345), for injuries occurring on or after January 1, 2006.

(7) When the final adjusted permanent disability rating of the injured employee is 70 percent or greater, but less than 100 percent: (A) not less than one hundred five dollars ($105), nor more than two hundred fifty-two dollars ($252), for injuries occurring on or after July 1, 1994; (B) not less than one hundred five dollars ($105), nor more than two hundred ninety-seven dollars ($297), for injuries occurring on or after July 1, 1995; (C) not less than one hundred five dollars ($105), nor more than three hundred forty-five dollars ($345), for injuries occurring on or after July 1, 1996; (D) not less than one hundred fifty dollars ($150), nor more than three hundred forty-five dollars ($345), for injuries occurring on or after January 1, 2003; (E) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than three hundred seventy-five dollars ($375), for injuries occurring on or after January 1, 2004; (F) not less than one hundred fifty-seven dollars and fifty cents ($157.50), nor more than four hundred five dollars ($405), for injuries occurring on or after January 1, 2005; and (G) not less than one hundred ninety-five dollars ($195), nor more than four hundred five dollars ($405), for injuries occurring on or after January 1, 2006.

(8) For injuries occurring on or after January 1, 2013:

(A) When the final adjusted permanent disability rating is less than 55 percent, not less than two hundred forty dollars ($240) nor more than three hundred forty-five dollars ($345).

(B) When the final adjusted permanent disability rating is 55 percent or greater but less than 70 percent, not less than two hundred forty dollars ($240) nor more than four hundred five dollars ($405).

(C) When the final adjusted permanent disability rating is 70 percent or greater but less than 100 percent, not less than two hundred forty dollars ($240) nor more than four hundred thirty-five dollars ($435).

(9) For injuries occurring on or after January 1, 2014, not less than two hundred forty dollars ($240) nor more than four hundred thirty-five dollars ($435).

(c) Between the limits specified in subdivisions (a) and (b), the average weekly earnings, except as provided in Sections 4456 to 4459, shall be arrived at as follows:

(1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.

(2) Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week; but the earnings from employments other than the employment in which the injury occurred shall not be taken at a higher rate than the hourly rate paid at the time of the injury.

(3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury,

due consideration being given to his or her actual earnings from all sources and employments.

(d) Every computation made pursuant to this section beginning January 1, 1990, shall be made only with reference to temporary disability or the permanent disability resulting from an original injury sustained after January 1, 1990. However, all rights existing under this section on January 1, 1990, shall be continued in force. Except as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

(Amended by Stats. 2012, Ch. 363, Sec. 34. Effective January 1, 2013.)

4453.5. Benefits payable on account of an injury shall not be affected by a subsequent statutory change in amounts of indemnity payable under this division, and shall be continued as authorized, and in the amounts provided for, by the law in effect at the time the injury giving rise to the right to such benefits occurred.

(Added by Stats. 1972, Ch. 460.)

4454. In determining average weekly earnings within the limits fixed in Section 4453, there shall be included overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee as part of his remuneration, which can be estimated in money, but such average weekly earnings shall not include any sum which the employer pays to or for the injured employee to cover any special expenses entailed on the employee by the nature of his employment, nor shall there be included either the cost or the market value of any savings, wage continuation, wage replacement, or stock acquisition program or of any employee benefit programs for which the employer pays or contributes to persons other than the employee or his family.

(Amended by Stats. 1968, 1st Ex. Sess., Ch. 4.)

4455. If the injured employee is under 18 years of age, and his or her incapacity is permanent, his or her average weekly earnings shall be deemed, within the limits fixed in Section 4453, to be the weekly sum that under ordinary circumstances he or she would probably be able to earn at the age of 18 years, in the occupation in which he or she was employed at the time of the injury or in any occupation to which he or she would reasonably have been promoted if he or she had not been injured. If the probable earnings at the age of 18 years cannot reasonably be determined, his or her average weekly earnings shall be taken at the maximum limit established in Section 4453.

(Amended by Stats. 2002, Ch. 6, Sec. 58. Effective January 1, 2003.)

4456. Where any employee is injured while engaged on any unemployment work relief program conducted by the State, or a political subdivision, or any State or governmental agency, the disability payments due under this division shall be determined solely on the monthly earnings or anticipated earnings of such person from such program, such payments to be within the minimum and maximum limits set forth in section 4453.

(Enacted by Stats. 1937, Ch. 90.)

4457. In the event the average weekly earnings of workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of labor on a particular piece of work, are not otherwise ascertainable, they shall be deemed to be forty dollars ($40).

(Amended by Stats. 1961, Ch. 903.)

4458. If a member registered as an active firefighting member of any regularly organized volunteer fire department as described in Section 3361 suffers injury or death while in the performance of his duty as fireman, or if a person engaged in fire suppression as described in Section 3365 suffers injury or death while so engaged, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

(Amended (as amended by Stats. 1973, Ch. 953) by Stats. 1976, Ch. 1347.)

4458.2. If an active peace officer of any department as described in Section 3362 suffers injury or death while in the performance of his or her duties as a peace officer, or if a person engaged in the performance of active law enforcement service as described in Section 3366 suffers injury or death while in the performance of that active law enforcement service, or if a person registered as a reserve peace officer of any regularly organized police or sheriff's department as described in Section 3362.5 suffers injury or death while in the performance of his or her duties as a peace officer, then, irrespective of his or her remuneration from this or other employment or from both, his or her average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his or her average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

(Amended by Stats. 1989, Ch. 892, Sec. 30.5.)

4458.5. If a member suffers "an injury" following termination of active service, and within the time prescribed in Section 3212, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, or 3213, then, irrespective of his remuneration from any postactive service employment, his average weekly earnings for the purposes of determining temporary disability indemnity, permanent total disability indemnity, and permanent partial disability indemnity, shall be taken at the maximum fixed for each such disability, respectively, in Section 4453.

(Added by renumbering Section 4458 (as added by Stats. 1976, Ch. 446) by Stats. 1978, Ch. 380.)

4459. The fact that an employee has suffered a previous disability, or received compensation therefor, does not preclude him from compensation for a later injury, or his dependents from compensation for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average weekly earnings shall be fixed at the sum which reasonably represents his earning capacity at the time of the later injury.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 2. Compensation Schedules

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

Article 1. General Provisions

(Article 1 enacted by Stats. 1937, Ch. 90.)

4550. Where liability for compensation exists under this division, such compensation shall be furnished or paid by the employer and shall be as provided in this chapter.

(Enacted by Stats. 1937, Ch. 90.)

4551. Where the injury is caused by the serious and willful misconduct of the injured employee, the compensation otherwise recoverable therefor shall be reduced one-half, except:

(a) Where the injury results in death.

(b) Where the injury results in a permanent disability of 70 percent or over.

(c) Where the injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the Division of Occupational Safety and Health, with reference to the safety of places of employment.

(d) Where the injured employee is under 16 years of age at the time of injury.

(Amended by Stats. 1980, Ch. 676.)

4552. The reduction of compensation because of the serious and willful misconduct of an employee is not enforceable, valid, or binding in any respect until the appeals board has so determined by its findings and award as provided in Chapter 6 of Part 4 of this division.

(Amended by Stats. 1965, Ch. 1513.)

4553. The amount of compensation otherwise recoverable shall be increased one-half, together with costs and expenses not to exceed two hundred fifty dollars ($250), where the employee is injured by reason of the serious and willful misconduct of any of the following:

(a) The employer, or his managing representative.

(b) If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.

(c) If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.

(Amended by Stats. 1982, Ch. 922, Sec. 10.)

4553.1. In order to support a holding of serious and willful misconduct by an employer based upon violation of a safety order, the appeals board must specifically find all of the following:

(1) The specific manner in which the order was violated.

(2) That the violation of the safety order did proximately cause the injury or death, and the specific manner in which the violation constituted the proximate cause.

(3) That the safety order, and the conditions making the safety order applicable, were known to, and violated by, a particular named person, either the employer, or a representative designated by Section 4553, or that the condition making the safety order applicable was obvious, created a probability of serious injury, and that the failure of the employer, or a representative designated by Section 4553, to correct the condition constituted a reckless disregard for the probable consequences.

(Amended by Stats. 1982, Ch. 922, Sec. 11.)

4554. In case of the willful failure by an employer to secure the payment of compensation, the amount of compensation otherwise recoverable for injury or death as provided in this division shall be increased 10 percent. Failure of the employer to secure the payment of compensation as provided in Article 1 (commencing at Section 3700) of Chapter 4 of Part 1 of this division is prima facie evidence of willfulness on his part.

(Amended by Stats. 1959, Ch. 1189.)

4555. In case of failure by an employer to secure the payment of compensation, the appeals board may award a reasonable attorney's fee in addition to the amount of compensation recoverable. When a fee is awarded under this section no further fee shall be allowed under Section 4903 but the provisions of Section 4903 shall be applicable to secure the payment of any fee awarded under this section.

(Amended by Stats. 1965, Ch. 1513.)

4555.5. Whenever a petition to reduce an award, based upon a permanent disability rating which has become final, is denied, the appeals board may order the petitioner to pay to the injured employee all costs incident to the furnishing of X-rays, laboratory services, medical reports, and medical testimony incurred by such employee in connection with the proceeding on such petition.

(Amended by Stats. 1965, Ch. 1513.)

4556. The increases provided for by this article shall not be limited by the provisions of Chapter 1 of this part relating to maximum amounts in the computation of average earnings.

(Added by Stats. 1945, Ch. 520.)

4557. Where the injury is to an employee under 16 years of age and illegally employed at the time of injury, the entire compensation otherwise recoverable shall be increased fifty percent (50%), and such additional sum shall be paid by the employer at the same time and in the same manner as the normal compensation benefits.

An employer shall not be held liable for the additional compensation provided by this section if such an employee is hired pursuant to a birth certificate, automobile driver's license, or other reasonable evidence of the fact the employee is over the age of 15 years, even though such evidence of age were falsely obtained by the employee. The additional compensation provided by this section shall not exceed the maximum sum specified by Section 4553 for additional compensation payable for serious and willful misconduct on the part of an employer. This section shall not apply to the State or any of its political subdivisions or districts.

(Amended by Stats. 1961, Ch. 1621.)

4558. (a) As used in this section:

(1) "Employer" means a named identifiable person who is, prior to the time of the employee's injury or death, an owner or supervisor having managerial authority to direct and control the acts of employees.

(2) "Failure to install" means omitting to attach a point of operation guard either provided or required by the manufacturer, when the attachment is required by the manufacturer and made known by him or her to the employer at the time of acquisition, installation, or manufacturer-required modification of the power press.

(3) "Manufacturer" means the designer, fabricator, or assembler of a power press.

(4) "Power press" means any material-forming machine that utilizes a die which is designed for use in the manufacture of other products.

(5) "Removal" means physical removal of a point of operation guard which is either installed by the manufacturer or installed by the employer pursuant to the requirements or instructions of the manufacturer.

(6) "Specifically authorized" means an affirmative instruction issued by the employer prior to the time of the employee's physical injury or death, but shall not mean any subsequent acquiescence in, or ratification of, removal of a point of operation safety guard.

(b) An employee, or his or her dependents in the event of the employee's death, may bring an action at law for damages against the employer where the employee's injury or death is proximately caused by the employer's knowing removal of, or knowing failure to install, a point of operation guard on a power press, and this removal or failure to install is specifically authorized by the employer under conditions known by the employer to create a probability of serious injury or death.

(c) No liability shall arise under this section absent proof that the manufacturer designed, installed, required, or otherwise provided by specification for the attachment of the

guards and conveyed knowledge of the same to the employer. Proof of conveyance of this information to the employer by the manufacturer may come from any source.

(d) No right of action for contribution or indemnity by any defendant shall exist against the employer; however, a defendant may seek contribution after the employee secures a judgment against the employer pursuant to the provisions of this section if the employer fails to discharge his or her comparative share of the judgment.

(Added by Stats. 1982, Ch. 922, Sec. 12.)

Article 2. Medical and Hospital Treatment

(Article 2 enacted by Stats. 1937, Ch. 90.)

4600. (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27.

(c) Unless the employer or the employer's insurer has established or contracted with a medical provider network as provided for in Section 4616, after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. A chiropractor shall not be a treating physician after the employee has received the maximum number of chiropractic visits allowed by subdivision (c) of Section 4604.5.

(d) (1) If an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury if the employee has health care coverage for nonoccupational injuries or illnesses on the date of injury in a plan, policy, or fund as described in subdivisions (b), (c), and (d) of Section 4616.7.

(2) For purposes of paragraph (1), a personal physician shall meet all of the following conditions:

(A) Be the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(B) Be the employee's primary care physician and has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history. "Personal physician" includes a medical group, if the medical group is a single corporation or partnership composed of licensed doctors of medicine or osteopathy, which operates an integrated multispecialty medical group providing comprehensive medical services predominantly for nonoccupational illnesses and injuries.

(C) The physician agrees to be predesignated.

(3) If the employee has health care coverage for nonoccupational injuries or illnesses on the date of injury in a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and the employer is notified pursuant to paragraph (1), all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code. Disputes regarding the provision of medical treatment shall be resolved pursuant to Article 5.55 (commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(4) If the employee has health care coverage for nonoccupational injuries or illnesses on the date of injury in a group health insurance policy as described in Section 4616.7, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the applicable provisions of the Insurance Code.

(5) The insurer may require prior authorization of any nonemergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610.

(6) An employee shall be entitled to all medically appropriate referrals by the personal physician to other physicians or medical providers within the nonoccupational health care plan. An employee shall be entitled to treatment by physicians or other medical providers outside of the nonoccupational health care plan pursuant to standards established in Article 5 (commencing with Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(e) (1) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a physician, he or she shall be entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination.

(2) Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of Human Resources pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

(f) When at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

(g) If the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments. To be a qualified interpreter for purposes of medical treatment appointments, an interpreter is not required to meet the requirements of subdivision (f), but shall meet any requirements established by rule by the administrative

director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code. The administrative director shall adopt a fee schedule for qualified interpreter fees in accordance with this section. Upon request of the injured employee, the employer or insurance carrier shall pay for interpreter services. An employer shall not be required to pay for the services of an interpreter who is not certified or is provisionally certified by the person conducting the medical treatment or examination unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code.

(h) Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured employee from the effects of his or her injury and prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and subject to Section 5307.1 or 5703.8. The employer shall not be liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription.

(Amended by Stats. 2014, Ch. 217, Sec. 1. Effective January 1, 2015.)

4600.1. (a) Subject to subdivision (b), any person or entity that dispenses medicines and medical supplies, as required by Section 4600, shall dispense the generic drug equivalent.

(b) A person or entity is not required to dispense a generic drug equivalent under either of the following circumstances:

(1) When a generic drug equivalent is unavailable.

(2) When the prescribing physician specifically provides in writing that a nongeneric drug must be dispensed.

(c) For purposes of this section, "dispense" has the same meaning as the definition contained in Section 4024 of the Business and Professions Code.

(d) Nothing in this section shall be construed to preclude a prescribing physician, who is also the dispensing physician, from dispensing a generic drug equivalent.

(e) This section shall only apply to medicines dispensed prior to the operative date of the drug formulary adopted pursuant to Section 5307.27.

(Amended by Stats. 2015, Ch. 525, Sec. 2. Effective January 1, 2016.)

4600.2. (a) Notwithstanding Section 4600, if a self-insured employer, group of self-insured employers, insurer of an employer, or group of insurers contracts with a pharmacy, group of pharmacies, or pharmacy benefit network to provide medicines and medical supplies required by this article to be provided to injured employees, those injured employees that are subject to the contract shall be provided medicines and medical supplies in the manner prescribed in the contract for as long as medicines or medical supplies are reasonably required to cure or relieve the injured employee from the effects of the injury. Medicines provided pursuant to the contract shall be subject to the drug formulary adopted by the administrative director pursuant to Section 5307.27, and such contracts may not limit the availability of medications otherwise prescribed pursuant to the formulary based on whether the pharmacy services are provided within or outside a medical provider network.

(b) Nothing in this section shall affect the ability of employee-selected physicians to continue to prescribe and have the employer provide medicines subject to the drug formulary and medical supplies that the physicians deem reasonably required to cure or relieve the injured employee from the effects of the injury.

(c) Each contract described in subdivision (a) shall comply with standards adopted by the administrative director. In adopting those standards, the administrative director shall seek to reduce pharmaceutical costs and may consult any relevant studies or practices in other states. The standards shall provide for access to a pharmacy within a reasonable geographic distance from an injured employee's residence.

(Amended by Stats. 2015, Ch. 525, Sec. 3. Effective January 1, 2016.)

4600.3. (a) (1) Notwithstanding Section 4600, when a self-insured employer, group of self-insured employers, or the insurer of an employer contracts with a health care organization certified pursuant to Section 4600.5 for health care services required by this article to be provided to injured employees, those employees who are subject to the contract shall receive medical services in the manner prescribed in the contract, providing that the employee may choose to be treated by a personal physician, personal chiropractor, or personal acupuncturist that he or she has designated prior to the injury, in which case the employee shall not be treated by the health care organization. Every employee shall be given an affirmative choice at the time of employment and at least annually thereafter to designate or change the designation of a health care organization or a personal physician, personal chiropractor, or personal acupuncturist. The choice shall be memorialized in writing and maintained in the employee's personnel records. The employee who has designated a personal physician, personal chiropractor, or personal acupuncturist may change their designated caregiver at any time prior to the injury. Any employee who fails to designate a personal physician, personal chiropractor, or personal acupuncturist shall be treated by the health care organization selected by the employer. If the health care organization offered by the employer is the workers' compensation insurer that covers the employee or is an entity that controls or is controlled by that insurer, as defined by Section 1215 of the Insurance Code, this information shall be included in the notice of contract with a health care organization.

(2) Each contract described in paragraph (1) shall comply with the certification standards provided in Section 4600.5, and shall provide all medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, that is reasonably required to cure or relieve the effects of the injury, as required by this division, without any payment by the employee of deductibles, copayments, or any share of the premium. However, an employee may receive immediate emergency medical treatment that is compensable from a medical service or health care provider who is not a member of the health care organization.

(3) Insured employers, a group of self-insured employers, or self-insured employers who contract with a health care organization for medical services shall give notice to employees of eligible medical service providers and any other information regarding the contract and manner of receiving medical services as the administrative director may prescribe. Employees shall be duly notified that if they choose to receive care from the health care organization they must receive treatment for all occupational injuries and illnesses as prescribed by this section.

(b) Notwithstanding subdivision (a), no employer which is required to bargain with an exclusive or certified bargaining agent which represents employees of the employer in accordance with state or federal employer-employee relations law shall contract with a health care organization for purposes of Section 4600.5 with regard to employees whom the bargaining agent

is recognized or certified to represent for collective bargaining purposes pursuant to state or federal employer-employee relations law unless authorized to do so by mutual agreement between the bargaining agent and the employer. If the collective bargaining agreement is subject to the National Labor Relations Act, the employer may contract with a health care organization for purposes of Section 4600.5 at any time when the employer and bargaining agent have bargained to impasse to the extent required by federal law.

(c) (1) When an employee is not receiving or is not eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, if 90 days from the date the injury is reported the employee who has been receiving treatment from a health care organization or his or her physician, chiropractor, acupuncturist, or other agent notifies his or her employer in writing that he or she desires to stop treatment by the health care organization, he or she shall have the right to be treated by a physician, chiropractor, or acupuncturist or at a facility of his or her own choosing within a reasonable geographic area.

(2) When an employee is receiving or is eligible to receive health care coverage for nonoccupational injuries or illnesses provided by the employer, and has agreed to receive care for occupational injuries and illnesses from a health care organization provided by the employer, the employee may be treated for occupational injuries and diseases by a physician, chiropractor, or acupuncturist of his or her own choice or at a facility of his or her own choice within a reasonable geographic area if the employee or his or her physician, chiropractor, acupuncturist, or other agent notifies his or her employer in writing only after 180 days from the date the injury was reported, or upon the date of contract renewal or open enrollment of the health care organization, whichever occurs first, but in no case until 90 days from the date the injury was reported.

(3) For purposes of this subdivision, an employer shall be deemed to provide health care coverage for nonoccupational injuries and illnesses if the employer pays more than one-half the costs of the coverage, or if the plan is established pursuant to collective bargaining.

(d) An employee and employer may agree to other forms of therapy pursuant to Section 3209.7.

(e) An employee enrolled in a health care organization shall have the right to no less than one change of physician on request, and shall be given a choice of physicians affiliated with the health care organization. The health care organization shall provide the employee a choice of participating physicians within five days of receiving a request. In addition, the employee shall have the right to a second opinion from a participating physician on a matter pertaining to diagnosis or treatment from a participating physician.

(f) Nothing in this section or Section 4600.5 shall be construed to prohibit a self-insured employer, a group of self-insured employers, or insurer from engaging in any activities permitted by Section 4600.

(g) Notwithstanding subdivision (c), in the event that the employer, group of employers, or the employer's workers' compensation insurer no longer contracts with the health care organization that has been treating an injured employee, the employee may continue treatment provided or arranged by the health care organization. If the employee does not choose to continue treatment by the health care organization, the employer may control the employee's treatment for 30 days from the date the injury was reported. After that period, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area.

(Amended by Stats. 2002, Ch. 6, Sec. 61. Effective January 1, 2003.)

4600.35. Any entity seeking to reimburse health care providers for health care services rendered to injured workers on a capitated, or per person per month basis, shall be licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(Added by Stats. 2002, Ch. 6, Sec. 61.5. Effective January 1, 2003.)

4600.4. (a) A workers' compensation insurer, third-party administrator, or other entity that requires, or pursuant to regulation requires, a treating physician to obtain either utilization review or prior authorization in order to diagnose or treat injuries or diseases compensable under this article, shall ensure the availability of those services from 9 a.m. to 5:30 p.m. Pacific coast time of each normal business day.

(b) For purposes of this section "normal business day" means a business day as defined in Section 9 of the Civil Code.

(Added by Stats. 1999, Ch. 124, Sec. 1. Effective January 1, 2000.)

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized by the administrative director under subdivision (e), may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director, sufficient to cover the actual cost of processing the application. A certificate is valid for the period that the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, and has provided the Managed Care Unit of the Division of Workers' Compensation with the necessary documentation to comply with this subdivision, that organization shall be deemed to be a health care organization able to provide health care pursuant to Section 4600.3, without further application duplicating the documentation already filed with the Department of Managed Health Care. These plans shall be required to remain in good standing with the Department of Managed Health Care, and shall meet the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to

the Department of Managed Health Care in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, and is in compliance with subdivision (d) of Sections 10133 and 10133.5 of the Insurance Code, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation insurer, third-party administrator, or any other entity that the administrative director determines meets the requirements of Section 4600.6, the administrative director shall certify the organization to provide health care pursuant to Section 4600.3 if the director finds that it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records relating to provider accessibility, peer review, utilization review, quality assurance, advertising, disclosure, medical and financial audits, and grievance systems, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(7) Complies with the following requirements:

(A) An organization certified by the administrative director under this subdivision may not provide or undertake to arrange for the provision of health care to employees, or to pay for or to reimburse any part of the cost of that health care in return for a prepaid or periodic charge paid by or on behalf of those employees.

(B) Every organization certified under this subdivision shall operate on a fee-for-service basis. As used in this section, fee for service refers to the situation where the amount of reimbursement paid by the employer to the organization or providers of health care is determined by the amount and type of health care rendered by the organization or provider of health care.

(C) An organization certified under this subdivision is prohibited from assuming risk.

(f) (1) A workers' compensation health care provider organization authorized by the Department of Business Oversight on December 31, 1997, shall be eligible for certification as a health care organization under subdivision (e).

(2) An entity that had, on December 31, 1997, submitted an application with the Commissioner of Business Oversight under Part 3.2 (commencing with Section 5150) shall be considered an applicant for certification under subdivision (e) and shall be entitled to priority in consideration of its application. The Commissioner of Business Oversight shall provide complete

files for all pending applications to the administrative director on or before January 31, 1998.

(g) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(h) Charges for services arranged for or provided by health care service plans certified by this section and that are paid on a per-enrollee-periodic-charge basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(i) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(j) In consultation with interested parties, including the Department of Business Oversight and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(k) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Managed Health Care, a workers' compensation health care provider organization authorized by the Department of Business Oversight, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(l) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(m) Individually identifiable medical information on patients submitted to the division shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) (1) When an injured employee requests acupuncture treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of an acupuncturist pursuant to guidelines for acupuncture care established by paragraph (2). Within five working days of the employee's request to see an acupuncturist, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated acupuncturist for work-related injuries that are within the guidelines for acupuncture care established by paragraph (2). Acupuncture care rendered in accordance with guidelines for acupuncture care established pursuant to paragraph (2) shall be provided by duly licensed acupuncturists affiliated with the plan.

(2) The health care organization shall establish guidelines for acupuncture care in consultation with affiliated acupuncturists who are participants in the health care organization's utilization review process for acupuncture care, which may include qualified medical evaluators. The guidelines for acupuncture care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated acupuncturist for the evaluation or treatment, or both, of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of acupuncture care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for acupuncture care in accordance with the health care organization's guidelines for acupuncture care established by paragraph (2).

Acupuncture utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for acupuncture care. Acupuncturists affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of acupuncture care for work-related injuries, the review shall include review by an acupuncturist affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to acupuncture care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(Amended by Stats. 2015, Ch. 190, Sec. 70. Effective January 1, 2016.)

4600.6. Any workers' compensation insurer, third-party administrator, or other entity seeking certification as a health care organization under subdivision (e) of Section 4600.5 shall be subject to the following rules and procedures:

(a) Each application for authorization as an organization under subdivision (e) of Section 4600.5 shall be verified by an authorized representative of the applicant and shall be in a form prescribed by the administrative director. The application shall be accompanied by the prescribed fee and shall set forth or be accompanied by each and all of the following:

(1) The basic organizational documents of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments thereto.

(2) A copy of the bylaws, rules, and regulations, or similar documents regulating the conduct of the internal affairs of the applicant.

(3) A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, which shall include, among others, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers, each shareholder with over 5 percent interest in the case of a corporation, and all partners or members in the case of a partnership or association, and each person who has loaned funds to the applicant for the operation of its business.

(4) A copy of any contract made, or to be made, between the applicant and any provider of health care, or persons listed in paragraph (3), or any other person or organization agreeing to perform an administrative function or service for the plan. The administrative director by rule may identify contracts excluded from this requirement and make provision for the submission of form contracts. The payment rendered or to be rendered to the provider of health care services shall be deemed confidential information that shall not be divulged by the administrative director, except that the payment may be disclosed and become a public record in any legislative, administrative, or judicial proceeding or inquiry. The organization shall also submit the name and address of each provider employed by, or contracting with, the organization, together with his or her license number.

(5) A statement describing the organization, its method of providing for health services, and its physical facilities. If applicable, this statement shall include the health care delivery capabilities of the organization, including the number of full-time and part-time physicians under Section 3209.3, the numbers and types of licensed or state-certified health care support staff, the number of hospital beds contracted for, and the arrangements and the methods by which health care will be provided, as defined by the administrative director under Sections 4600.3 and 4600.5.

(6) A copy of the disclosure forms or materials that are to be issued to employees.

(7) A copy of the form of the contract that is to be issued to any employer, insurer of an employer, or a group of self-insured employers.

(8) Financial statements accompanied by a report, certificate, or opinion of an independent certified public accountant. However, the financial statements from public entities or political subdivisions of the state need not include a report, certificate, or opinion by an independent certified public accountant if the financial statement complies with any requirements that may be established by regulation of the administrative director.

(9) A description of the proposed method of marketing the organization and a copy of any contract made with any person to solicit on behalf of the organization or a copy of the form of agreement used and a list of the contracting parties.

(10) A statement describing the service area or areas to be served, including the service location for each provider rendering professional services on behalf of the organization and the location of any other organization facilities where required by the administrative director.

(11) A description of organization grievance procedures to be utilized as required by this part, and a copy of the form specified by paragraph (3) of subdivision (j).

(12) A description of the procedures and programs for internal review of the quality of health care pursuant to the requirements set forth in this part.

(13) Evidence of adequate insurance coverage or self-insurance to respond to claims for damages arising out of the furnishing of workers' compensation health care.

(14) Evidence of adequate insurance coverage or self-insurance to protect against losses of facilities where required by the administrative director.

(15) Evidence of adequate workers' compensation coverage to protect against claims arising out of work-related injuries that might be brought by the employees and staff of an organization against the organization.

(16) Evidence of fidelity bonds in such amount as the administrative director prescribes by regulation.

(17) Other information that the administrative director may reasonably require.

(b) (1) An organization, solicitor, solicitor firm, or representative may not use or permit the use of any advertising or solicitation that is untrue or misleading, or any form of disclosure that is deceptive. For purposes of this chapter:

(A) A written or printed statement or item of information shall be deemed untrue if it does not conform to fact in any respect that is or may be significant to an employer or employee, or potential employer or employee.

(B) A written or printed statement or item of information shall be deemed misleading whether or not it may be literally true, if, in the total context in which the statement is made or the item of information is communicated, the statement or item of information may be understood by a person not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage, or the absence of any exclusion, limitation, or disadvantage of possible significance to an employer or employee, or potential employer or employee.

(C) A disclosure form shall be deemed to be deceptive if the disclosure form taken as a whole and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge of workers' compensation health care, and the disclosure form therefor, to expect benefits, service charges, or other advantages that the disclosure form does not provide or that the organization issuing that disclosure form does not regularly make available to employees.

(2) An organization, solicitor, or representative may not use or permit the use of any verbal statement that is untrue, misleading, or deceptive or make any representations about health care offered by the organization or its cost that does not conform to fact. All verbal statements are to be held to the same standards as those for printed matter provided in paragraph (1).

(c) It is unlawful for any person, including an organization, subject to this part, to represent or imply in any manner that the person or organization has been sponsored, recommended, or approved, or that the person's or organization's abilities or qualifications have in any respect been passed upon, by the administrative director.

(d) (1) An organization may not publish or distribute, or allow to be published or distributed on its behalf, any advertisement unless (A) a true copy thereof has first been filed with the administrative director, at least 30 days prior to any such use, or any shorter period as the administrative director by rule or order may allow, and (B) the administrative director by notice has not found the advertisement, wholly or in part, to be untrue, misleading, deceptive, or otherwise not in compliance with this part or the rules thereunder, and specified the deficiencies, within the 30 days or any shorter time as the administrative director by rule or order may allow.

(2) If the administrative director finds that any advertisement of an organization has materially failed to comply with this part or the rules thereunder, the administrative director may, by order, require the organization to publish in the same or similar medium, an approved correction or retraction of any untrue, misleading, or deceptive statement contained in the advertising.

(3) The administrative director by rule or order may classify organizations and advertisements and exempt certain classes, wholly or in part, either unconditionally or upon specified terms and conditions or for specified periods, from the application of subdivision (a).

(e) (1) The administrative director shall require the use by each organization of disclosure forms or materials containing any information regarding the health care and terms of the workers' compensation health care contract that the administrative director may require, so as to afford the public, employers, and employees with a full and fair disclosure of the provisions of the contract in readily understood language and in a clearly organized manner. The administrative director may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between contracts of the same or other types of organizations. The disclosure form shall describe the health care that is required by the administrative director under Sections 4600.3 and 4600.5, and shall provide that all information be in concise and specific terms, relative to the contract, together with any additional information as may be required by the administrative director, in connection with the organization or contract.

(2) All organizations, solicitors, and representatives of a workers' compensation health care provider organization shall, when presenting any contract for examination or sale to a prospective employee, provide the employee with a properly completed disclosure form, as prescribed by the administrative director pursuant to this section for each contract so examined or sold.

(3) In addition to the other disclosures required by this section, every organization and any agent or employee of the organization shall, when representing an organization for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium cost to health care paid for contracts with individuals and with groups of the same or similar size for the organization's preceding fiscal year. An organization may report that information by geographic area, provided the organization identifies the geographic area and reports information applicable to that geographic area.

(4) Where the administrative director finds it necessary in the interest of full and fair disclosure, all advertising and other consumer information disseminated by an organization for the purpose of influencing persons to become members of an organization shall contain any supplemental disclosure information that the administrative director may require.

(f) When the administrative director finds it necessary in the interest of full and fair disclosure, all advertising and other consumer information disseminated by an organization for the purpose of influencing persons to become members of an organization shall contain any supplemental disclosure information that the administrative director may require.

(g) (1) An organization may not refuse to enter into any contract, or may not cancel or decline to renew or reinstate any contract, because of the age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code of any contracting party, prospective contracting party, or person reasonably expected to benefit from that contract as an employee or otherwise.

(2) The terms of any contract shall not be modified, and the benefits or coverage of any contract shall not be subject to any limitations, exceptions, exclusions, reductions, copayments, coinsurance, deductibles, reservations, or premium, price, or charge differentials, or other modifications because of the age or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code of any contracting party, potential contracting party, or person reasonably expected to benefit from that contract as an employee or otherwise; except that premium, price, or charge differentials because of the sex or age of any individual when based on objective, valid, and up-to-date statistical and actuarial data are not prohibited. Nothing in this section shall be construed to permit an organization to charge different rates to individual employees within the same group solely on the basis of the employee's sex.

(3) It shall be deemed a violation of subdivision (a) for any organization to utilize marital status, living arrangements, occupation, gender, beneficiary designation, ZIP Codes or other territorial classification, or any combination thereof for the purpose of establishing sexual orientation. Nothing in this section shall be construed to alter in any manner the existing law prohibiting organizations from conducting tests for the presence of human immunodeficiency virus or evidence thereof.

(4) This section shall not be construed to limit the authority of the administrative director to adopt or enforce regulations prohibiting discrimination because of sex, marital status, or sexual orientation.

(h) (1) An organization may not use in its name any of the words "insurance," "casualty," "health care service plan," "health plan," "surety," "mutual," or any other words descriptive of the health plan, insurance, casualty, or surety business or use any name similar to the name or description of any health care service plan, insurance, or surety corporation doing business in this state unless that organization controls or is controlled by an entity licensed as a health care service plan or insurer pursuant to the Health and Safety Code or the Insurance Code and the organization employs a name related to that of the controlled or controlling entity.

(2) Section 2415 of the Business and Professions Code, pertaining to fictitious names, does not apply to organizations certified under this section.

(3) An organization or solicitor firm may not adopt a name style that is deceptive, or one that could cause the public to believe the organization is affiliated with or recommended by any governmental or private entity unless this affiliation or endorsement exists.

(i) Each organization shall meet the following requirements:

(1) All facilities located in this state, including, but not limited to, clinics, hospitals, and skilled nursing facilities, to be utilized by the organization shall be licensed by the State Department of Health Services, if that licensure is required by law. Facilities not located in this state shall conform to all licensing and other requirements of the jurisdiction in which they are located.

(2) All personnel employed by or under contract to the organization shall be licensed or certified by their respective board or agency, where that licensure or certification is required by law.

(3) All equipment required to be licensed or registered by law shall be so licensed or registered and the operating personnel for that equipment shall be licensed or certified as required by law.

(4) The organization shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at any time as may be appropriate and consistent with good professional practice.

(5) All health care shall be readily available at reasonable times to all employees. To the extent feasible, the organization shall make all health care readily accessible to all employees.

(6) The organization shall employ and utilize allied health manpower for the furnishing of health care to the extent permitted by law and consistent with good health care practice.

(7) The organization shall have the organizational and administrative capacity to provide services to employees. The organization shall be able to demonstrate to the department that health care decisions are rendered by qualified providers, unhindered by fiscal and administrative management.

(8) All contracts with employers, insurers of employers, and self-insured employers and all contracts with providers, and other persons furnishing services, equipment, or facilities to or in connection with the workers' compensation health care organization, shall be fair, reasonable, and consistent with the objectives of this part.

(9) Each organization shall provide to employees all workers' compensation health care required by this code. The administrative director shall not determine the scope of workers' compensation health care to be offered by an organization.

(j) (1) Every organization shall establish and maintain a grievance system approved by the administrative director under which employees may submit their grievances to the organization. Each system shall provide reasonable procedures in accordance with regulations adopted by the administrative director that shall ensure adequate consideration of employee grievances and rectification when appropriate.

(2) Every organization shall inform employees upon enrollment and annually thereafter of the procedures for processing and resolving grievances. The information shall include the location and telephone number where grievances may be submitted.

(3) Every organization shall provide forms for complaints to be given to employees who wish to register written complaints. The forms used by organizations shall be approved by the administrative director in advance as to format.

(4) The organization shall keep in its files all copies of complaints, and the responses thereto, for a period of five years.

(k) Every organization shall establish procedures in accordance with regulations of the administrative director for continuously reviewing the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person who participates in quality of care or utilization reviews by peer review committees that are composed chiefly of physicians, as defined by Section 3209.3, for any act performed during the reviews if the person acts without malice, has made a reasonable effort to obtain the facts of the matter, and believes that the action taken is warranted by the facts, and neither the proceedings nor the records of the reviews shall be subject to discovery, nor shall any person in attendance at the reviews be required to testify as to what transpired thereat. Disclosure of the proceedings or records to the governing body of an organization or to any person or entity designated by the organization to review activities of the committees shall not alter the status of the records or of the proceedings as privileged communications.

The above prohibition relating to discovery or testimony does not apply to the statements made by any person in attendance at a review who is a party to an action or proceeding the subject matter of which was reviewed, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits, or to the administrative director in conducting surveys pursuant to subdivision (o).

This section shall not be construed to confer immunity from liability on any workers' compensation health care organization. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against an organization, the cause of action shall exist notwithstanding the provisions of this section.

(l) Nothing in this chapter shall be construed to prevent an organization from utilizing subcommittees to participate in peer review activities, nor to prevent an organization from delegating the responsibilities required by subdivision (i) as it determines to be appropriate, to subcommittees including subcommittees composed of a majority of nonphysician health care providers licensed pursuant to the Business and Professions Code, as long as the organization controls the scope of authority delegated and may revoke all or part of this authority at any time. Persons who participate in the subcommittees shall be entitled to the same immunity from monetary liability and actions for civil damages as persons who participate in organization or provider peer review committees pursuant to subdivision (i).

(m) Every organization shall have and shall demonstrate to the administrative director that it has all of the following:

(1) Adequate provision for continuity of care.

(2) A procedure for prompt payment and denial of provider claims.

(n) Every contract between an organization and an employer or insurer of an employer, and every contract between any organization and a provider of health care, shall be in writing.

(o) (1) The administrative director shall conduct periodically an onsite medical survey of the health care delivery system of each organization. The survey shall include a review of the procedures for obtaining health care, the procedures for regulating utilization, peer review mechanisms, internal procedures for assuring quality of care, and the overall performance of the organization in providing health care and meeting the health needs of employees.

(2) The survey shall be conducted by a panel of qualified health professionals experienced in evaluating the delivery of workers'

compensation health care. The administrative director shall be authorized to contract with professional organizations or outside personnel to conduct medical surveys. These organizations or personnel shall have demonstrated the ability to objectively evaluate the delivery of this health care.

(3) Surveys performed pursuant to this section shall be conducted as often as deemed necessary by the administrative director to assure the protection of employees, but not less frequently than once every three years. Nothing in this section shall be construed to require the survey team to visit each clinic, hospital, office, or facility of the organization.

(4) Nothing in this section shall be construed to require the medical survey team to review peer review proceedings and records conducted and compiled under this section or in medical records. However, the administrative director shall be authorized to require onsite review of these peer review proceedings and records or medical records where necessary to determine that quality health care is being delivered to employees. Where medical record review is authorized, the survey team shall ensure that the confidentiality of the physician-patient relationship is safeguarded in accordance with existing law and neither the survey team nor the administrative director or the administrative director's staff may be compelled to disclose this information except in accordance with the physician-patient relationship. The administrative director shall ensure that the confidentiality of the peer review proceedings and records is maintained. The disclosure of the peer review proceedings and records to the administrative director or the medical survey team shall not alter the status of the proceedings or records as privileged and confidential communications.

(5) The procedures and standards utilized by the survey team shall be made available to the organizations prior to the conducting of medical surveys.

(6) During the survey, the members of the survey team shall offer such advice and assistance to the organization as deemed appropriate.

(7) The administrative director shall notify the organization of deficiencies found by the survey team. The administrative director shall give the organization a reasonable time to correct the deficiencies, and failure on the part of the organization to comply to the administrative director's satisfaction shall constitute cause for disciplinary action against the organization.

(8) Reports of all surveys, deficiencies, and correction plans shall be open to public inspection, except that no surveys, deficiencies or correction plans shall be made public unless the organization has had an opportunity to review the survey and file a statement of response within 30 days, to be attached to the report.

(p) (1) All records, books, and papers of an organization, management company, solicitor, solicitor firm, and any provider or subcontractor providing medical or other services to an organization, management company, solicitor, or solicitor firm shall be open to inspection during normal business hours by the administrative director.

(2) To the extent feasible, all the records, books, and papers described in paragraph (1) shall be located in this state. In examining those records outside this state, the administrative director shall consider the cost to the organization, consistent with the effectiveness of the administrative director's examination, and may upon reasonable notice require that these records, books, and papers, or a specified portion thereof, be made available for examination in this state, or that a true and accurate copy of these records, books, and papers, or a specified portion thereof, be furnished to the administrative director.

(q) (1) The administrative director shall conduct an examination of the administrative affairs of any organization, and each person with whom the organization has made arrangements for administrative, or management services, as often as deemed necessary to protect the interest of employees, but not less frequently than once every five years.

(2) The expense of conducting any additional or nonroutine examinations pursuant to this section, and the expense of conducting any additional or nonroutine medical surveys pursuant to subdivision (o) shall be charged against the organization being examined or surveyed. The amount shall include the actual salaries or compensation paid to the persons making the examination or survey, the expenses incurred in the course thereof, and overhead costs in connection therewith as fixed by the administrative director. In determining the cost of examinations or surveys, the administrative director may use the estimated average hourly cost for all persons performing examinations or surveys of workers' compensation health care organizations for the fiscal year. The amount charged shall be remitted by the organization to the administrative director.

(3) Reports of all examinations shall be open to public inspection, except that no examination shall be made public, unless the organization has had an opportunity to review the examination report and file a statement or response within 30 days, to be attached to the report.

(Amended by Stats. 2008, Ch. 682, Sec. 9. Effective January 1, 2009.)

4600.7. (a) The Workers' Compensation Managed Care Fund is hereby created in the State Treasury for the administration of Sections 4600.3 and 4600.5 by the Division of Workers' Compensation. The administrative director shall establish a schedule of fees and revenues to be charged to certified health care organizations and applicants for certification to fully fund the administration of these provisions and to repay amounts received as a loan from the General Fund. All fees and revenues shall be deposited in the Workers' Compensation Managed Care Fund and shall be used when appropriated by the Legislature solely for the purpose of carrying out the responsibilities of the Division of Workers' Compensation under Section 4600.3 or 4600.5.

(b) On and after July 1, 1998, no funds received as a loan from the General Fund shall be used to support the administration of Sections 4600.3 and 4600.5. The loan amount shall be repaid to the General Fund by assessing a surcharge on the enrollment fee for each of the next five fiscal years. In the event the surcharge does not produce sufficient revenue over this period, the surcharge shall be adjusted to fully repay the loan over the following three fiscal years, with the final assessment calculated by dividing the balance of the loan by the enrollees at the end of the final fiscal year.

(Amended by Stats. 1998, Ch. 282, Sec. 1. Effective January 1, 1999.)

4601. (a) If the employee so requests, the employer shall tender the employee one change of physician. The employee at any time may request that the employer tender this one-time change of physician. Upon request of the employee for a change of physician, the maximum amount of time permitted by law for the employer or insurance carrier to provide the employee an alternative physician or, if requested by the employee, a chiropractor, or an acupuncturist shall be five working days from the date of the request. Notwithstanding the 30-day time period specified in Section 4600, a request for a change of physician pursuant to this section may be made at any time. The employee

is entitled, in any serious case, upon request, to the services of a consulting physician, chiropractor, or acupuncturist of his or her choice at the expense of the employer. The treatment shall be at the expense of the employer.

(b) If an employee requesting a change of physician pursuant to subdivision (a) has notified his or her employer in writing prior to the date of injury that he or she has a personal chiropractor, the alternative physician tendered by the employer to the employee, if the employee so requests, shall be the employee's personal chiropractor. For the purpose of this article, "personal chiropractor" means the employee's regular chiropractor licensed pursuant to Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code, who has previously directed treatment of the employee, and who retains the employee's chiropractic treatment records, including his or her chiropractic history.

(c) If an employee requesting a change of physician pursuant to subdivision (a) has notified his or her employer in writing prior to the date of injury that he or she has a personal acupuncturist, the alternative physician tendered by the employer to the employee, if the employee so requests, shall be the employee's personal acupuncturist. For the purpose of this article, "personal acupuncturist" means the employee's regular acupuncturist licensed pursuant to Chapter 12 (commencing with Section 4935) of Division 2 of the Business and Professions Code, who has previously directed treatment of the employee, and who retains the employee's acupuncture treatment records, including his or her acupuncture history.

(Amended by Stats. 1998, Ch. 440, Sec. 5. Effective January 1, 1999.)

4602. If the employee so requests, the employer shall procure certification by either the administrative director or the appeals board as the case may be of the competency, for the particular case, of the consulting or additional physicians.

(Amended by Stats. 1965, Ch. 1513.)

4603. If the employer desires a change of physicians or chiropractor, he may petition the administrative director who, upon a showing of good cause by the employer, may order the employer to provide a panel of five physicians, or if requested by the employee, four physicians and one chiropractor competent to treat the particular case, from which the employee must select one.

(Repealed and added by Stats. 1975, Ch. 1259.)

4603.2. (a) (1) Upon selecting a physician pursuant to Section 4600, the employee or physician shall notify the employer of the name and address, including the name of the medical group, if applicable, of the physician. The physician shall submit a report to the employer within five working days from the date of the initial examination, as required by Section 6409, and shall submit periodic reports at intervals that may be prescribed by rules and regulations adopted by the administrative director.

(2) If the employer objects to the employee's selection of the physician on the grounds that the physician is not within the medical provider network used by the employer, and there is a final determination that the employee was entitled to select the physician pursuant to Section 4600, the employee shall be entitled to continue treatment with that physician at the employer's expense in accordance with this division, notwithstanding Section 4616.2. The employer shall be required to pay from the date of the initial examination if the physician's report was submitted within five working days of the initial examination. If the physician's report was submitted more than five working days after the initial examination, the employer and the employee shall not be required to pay for any services prior to the date the physician's report was submitted.

(3) If the employer objects to the employee's selection of the physician on the grounds that the physician is not within the medical provider network used by the employer, and there is a final determination that the employee was not entitled to select a physician outside of the medical provider network, the employer shall have no liability for treatment provided by or at the direction of that physician or for any consequences of the treatment obtained outside the network.

(b) (1) (A) A provider of services provided pursuant to Section 4600, including, but not limited to, physicians, hospitals, pharmacies, interpreters, copy services, transportation services, and home health care services, shall submit its request for payment with an itemization of services provided and the charge for each service, a copy of all reports showing the services performed, the prescription or referral from the primary treating physician if the services were performed by a person other than the primary treating physician, and any evidence of authorization for the services that may have been received. This section does not prohibit an employer, insurer, or third-party claims administrator from establishing, through written agreement, an alternative manual or electronic request for payment with providers for services provided pursuant to Section 4600.

(B) Effective for services provided on or after January 1, 2017, the request for payment with an itemization of services provided and the charge for each service shall be submitted to the employer within 12 months of the date of service or within 12 months of the date of discharge for inpatient facility services. The administrative director shall adopt rules to implement the 12-month limitation period. The rules shall define circumstances that constitute good cause for an exception to the 12-month period, including provisions to address the circumstances of a nonoccupational injury or illness later found to be a compensable injury or illness. The request for payment is barred unless timely submitted.

(C) Notwithstanding the requirements of this paragraph, a copy of the prescription shall not be required with a request for payment for pharmacy services, unless the provider of services has entered into a written agreement, as provided in this paragraph, that requires a copy of a prescription for a pharmacy service.

(D) This section does not preclude an employer, insurer, pharmacy benefits manager, or third-party claims administrator from requesting a copy of the prescription during a review of any records of prescription drugs that were dispensed by a pharmacy.

(2) Except as provided in subdivision (d) of Section 4603.4, or under contracts authorized under Section 5307.11, payment for medical treatment provided or prescribed by the treating physician selected by the employee or designated by the employer shall be made at reasonable maximum amounts in the official medical fee schedule, pursuant to Section 5307.1, in effect on the date of service. Payments shall be made by the employer with an explanation of review pursuant to Section 4603.3 within 45 days after receipt of each separate, itemization of medical services provided, together with any required reports and any written authorization for services that may have been received by the physician. If the itemization or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in the explanation of review, that the itemization is contested, denied, or considered incomplete, within 30 days after receipt of the itemization by the employer. An explanation of review that states an itemization is incomplete shall also state all additional information required to make a decision. A properly documented

list of services provided and not paid at the rates then in effect under Section 5307.1 within the 45-day period shall be paid at the rates then in effect and increased by 15 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the itemization, unless the employer does both of the following:

(A) Pays the provider at the rates in effect within the 45-day period.

(B) Advises, in an explanation of review pursuant to Section 4603.3, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of an itemization that includes services provided by a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the itemization shall satisfy the requirements of this paragraph.

An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

(3) Notwithstanding paragraph (1), if the employer is a governmental entity, payment for medical treatment provided or prescribed by the treating physician selected by the employee or designated by the employer shall be made within 60 days after receipt of each separate itemization, together with any required reports and any written authorization for services that may have been received by the physician.

(4) Duplicate submissions of medical services itemizations, for which an explanation of review was previously provided, shall require no further or additional notification or objection by the employer to the medical provider and shall not subject the employer to any additional penalties or interest pursuant to this section for failing to respond to the duplicate submission. This paragraph shall apply only to duplicate submissions and does not apply to any other penalties or interest that may be applicable to the original submission.

(c) Interest or an increase in compensation paid by an insurer pursuant to this section shall be treated in the same manner as an increase in compensation under subdivision (d) of Section 4650 for the purposes of any classification of risks and premium rates, and any system of merit rating approved or issued pursuant to Article 2 (commencing with Section 11730) of Chapter 3 of Part 3 of Division 2 of the Insurance Code.

(d) (1) Whenever an employer or insurer employs an individual or contracts with an entity to conduct a review of an itemization submitted by a physician or medical provider, the employer or insurer shall make available to that individual or entity all documentation submitted together with that itemization by the physician or medical provider. When an individual or entity conducting an itemization review determines that additional information or documentation is necessary to review the itemization, the individual or entity shall contact the claims administrator or insurer to obtain the necessary information or documentation that was submitted by the physician or medical provider pursuant to subdivision (b).

(2) An individual or entity reviewing an itemization of service submitted by a physician or medical provider shall not alter the procedure codes listed or recommend reduction of the amount of the payment unless the documentation submitted by the physician or medical provider with the itemization of service has been reviewed by that individual or entity. If the reviewer does not recommend payment for services as itemized by the physician or medical provider, the explanation of review shall provide the physician or medical provider with a specific explanation as to why the reviewer altered the procedure code or changed other parts of the itemization and the specific deficiency in the itemization or documentation that caused the reviewer to conclude that the altered procedure code or amount recommended for payment more accurately represents the service performed.

(e) (1) If the provider disputes the amount paid, the provider may request a second review within 90 days of service of the explanation of review or an order of the appeals board resolving the threshold issue as stated in the explanation of review pursuant to paragraph (5) of subdivision (a) of Section 4603.3. The request for a second review shall be submitted to the employer on a form prescribed by the administrative director and shall include all of the following:

(A) The date of the explanation of review and the claim number or other unique identifying number provided on the explanation of review.

(B) The item and amount in dispute.

(C) The additional payment requested and the reason therefor.

(D) The additional information provided in response to a request in the first explanation of review or any other additional information provided in support of the additional payment requested.

(2) If the only dispute is the amount of payment and the provider does not request a second review within 90 days, the bill shall be deemed satisfied and neither the employer nor the employee shall be liable for any further payment.

(3) Within 14 days of a request for second review, the employer shall respond with a final written determination on each of the items or amounts in dispute. Payment of any balance not in dispute shall be made within 21 days of receipt of the request for second review. This time limit may be extended by mutual written agreement.

(4) If the provider contests the amount paid, after receipt of the second review, the provider shall request an independent bill review as provided for in Section 4603.6.

(f) Except as provided in paragraph (4) of subdivision (e), the appeals board shall have jurisdiction over disputes arising out of this subdivision pursuant to Section 5304.

(Amended by Stats. 2016, Ch. 214, Sec. 1. Effective January 1, 2017.)

4603.3. (a) Upon payment, adjustment, or denial of a complete or incomplete itemization of medical services, an employer shall provide an explanation of review in the manner prescribed by the administrative director that shall include all of the following:

(1) A statement of the items or procedures billed and the amounts requested by the provider to be paid.

(2) The amount paid.

(3) The basis for any adjustment, change, or denial of the item or procedure billed.

(4) The additional information required to make a decision for an incomplete itemization.

(5) If a denial of payment is for some reason other than a fee dispute, the reason for the denial.

(6) Information on whom to contact on behalf of the employer if a dispute arises over the payment of the billing. The explanation of review shall inform the medical provider of the time limit to raise any objection regarding the items or procedures paid or disputed and how to obtain an independent review of the medical bill pursuant to Section 4603.6.

(b) The administrative director may adopt regulations requiring the use of electronic explanations of review.

(Added by Stats. 2012, Ch. 363, Sec. 37. Effective January 1, 2013.)

4603.4. (a) The administrative director shall adopt rules and regulations to do all of the following:

(1) Ensure that all health care providers and facilities submit medical bills for payment on standardized forms.

(2) Require acceptance by employers of electronic claims for payment of medical services.

(3) Ensure confidentiality of medical information submitted on electronic claims for payment of medical services.

(4) Require the timely submission of paper or electronic bills in conformity with subparagraph (B) of paragraph (1) of subdivision (b) of Section 4603.2.

(b) To the extent feasible, standards adopted pursuant to subdivision (a) shall be consistent with existing standards under the federal Health Insurance Portability and Accountability Act of 1996.

(c) Require all employers to accept electronic claims for payment of medical services.

(d) Payment for medical treatment provided or prescribed by the treating physician selected by the employee or designated by the employer shall be made with an explanation of review by the employer within 15 working days after electronic receipt of an itemized electronic billing for services at or below the maximum fees provided in the official medical fee schedule adopted pursuant to Section 5307.1. If the billing is contested, denied, or incomplete, payment shall be made with an explanation of review of any uncontested amounts within 15 working days after electronic receipt of the billing, and payment of the balance shall be made in accordance with Section 4603.2.

(Amended by Stats. 2016, Ch. 214, Sec. 2. Effective January 1, 2017.)

4603.5. The administrative director shall adopt rules pertaining to the format and content of notices required by this article; define reasonable geographic areas for the purposes of Section 4600; specify time limits for all such notices, and responses thereto; and adopt any other rules necessary to make effective the requirements of this article.

Employers shall notify all employees of their rights under this section.

(Added by Stats. 1975, Ch. 1259.)

4603.6. (a) If the only dispute is the amount of payment and the provider has received a second review that did not resolve the dispute, the provider may request an independent bill review within 30 calendar days of service of the second review pursuant to Section 4603.2 or 4622. If the provider fails to request an independent bill review within 30 days, the bill shall be deemed satisfied, and neither the employer nor the employee shall be liable for any further payment. If the employer has contested liability for any issue other than the reasonable amount payable for services, that issue shall be resolved prior to filing a request for independent bill review, and the time limit for requesting independent bill review shall not begin to run until the resolution of that issue becomes final, except as provided for in Section 4622.

(b) A request for independent review shall be made on a form prescribed by the administrative director, and shall include copies of the original billing itemization, any supporting documents that were furnished with the original billing, the explanation of review, the request for second review together with any supporting documentation submitted with that request, and the final explanation of the second review. The administrative director may require that requests for independent bill review be submitted electronically. A copy of the request, together with all required documents, shall be served on the employer. Only the request form and the proof of payment of the fee required by subdivision (c) shall be filed with the administrative director. Upon notice of assignment of the independent bill reviewer, the requesting party shall submit the documents listed in this subdivision to the independent bill reviewer within 10 days.

(c) The provider shall pay to the administrative director a fee determined by the administrative director to cover no more than the reasonable estimated cost of independent bill review and administration of the independent bill review program. The administrative director may prescribe different fees depending on the number of items in the bill or other criteria determined by regulation adopted by the administrative director. If any additional payment is found owing from the employer to the medical provider, the employer shall reimburse the provider for the fee in addition to the amount found owing.

(d) Upon receipt of a request for independent bill review and the required fee, the administrative director or the administrative director's designee shall assign the request to an independent bill reviewer within 30 days and notify the medical provider and employer of the independent reviewer assigned.

(e) The independent bill reviewer shall review the materials submitted by the parties and make a written determination of any additional amounts to be paid to the medical provider and state the reasons for the determination. If the independent bill reviewer deems necessary, the independent bill reviewer may request additional documents from the medical provider or employer. The employer shall have no obligation to serve medical reports on the provider unless the reports are requested by the independent bill reviewer. If additional documents are requested, the parties shall respond with the documents requested within 30 days and shall provide the other party with copies of any documents submitted to the independent reviewer, and the independent reviewer shall make a written determination of any additional amounts to be paid to the medical provider and state the reasons for the determination within 60 days of the receipt of the administrative director's assignment. The written determination of the independent bill reviewer shall be sent to the administrative director and provided to both the medical provider and the employer.

(f) The determination of the independent bill reviewer shall be deemed a determination and order of the administrative director. The determination is final and binding on all parties unless an aggrieved party files with the appeals board a verified appeal from the medical bill review determination of the administrative director within 20 days of the service of the determination. The medical bill review determination of the administrative director shall be presumed to be correct and shall be set aside only upon clear and convincing evidence of one or more of the following grounds for appeal:

(1) The administrative director acted without or in excess of his or her powers.

(2) The determination of the administrative director was procured by fraud.

(3) The independent bill reviewer was subject to a material conflict of interest that is in violation of Section 139.5.

(4) The determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability.

(5) The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of

fact is a matter of ordinary knowledge based on the information submitted for review and not a matter that is subject to expert opinion.

(g) If the determination of the administrative director is reversed, the dispute shall be remanded to the administrative director to submit the dispute to independent bill review by a different independent review organization. In the event that a different independent bill review organization is not available after remand, the administrative director shall submit the dispute to the original bill review organization for review by a different reviewer within the organization. In no event shall the appeals board or any higher court make a determination of ultimate fact contrary to the determination of the bill review organization.

(h) Once the independent bill reviewer has made a determination regarding additional amounts to be paid to the medical provider, the employer shall pay the additional amounts per the timely payment requirements set forth in Sections 4603.2 and 4603.4.

(Added by Stats. 2012, Ch. 363, Sec. 39. Effective January 1, 2013.)

4604. Controversies between employer and employee arising under this chapter shall be determined by the appeals board, upon the request of either party, except as otherwise provided by Section 4610.5.

(Amended by Stats. 2012, Ch. 363, Sec. 40. Effective January 1, 2013.)

4604.5. (a) The recommended guidelines set forth in the medical treatment utilization schedule adopted by the administrative director pursuant to Section 5307.27 shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines reasonably is required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof.

(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices that are evidence and scientifically based, nationally recognized, and peer reviewed. The guidelines shall be designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and shall constitute care in accordance with Section 4600 for all injured workers diagnosed with industrial conditions.

(c) (1) Notwithstanding the medical treatment utilization schedule, for injuries occurring on and after January 1, 2004, an employee shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury.

(2) (A) Paragraph (1) shall not apply when an employer authorizes, in writing, additional visits to a health care practitioner for physical medicine services. Payment or authorization for treatment beyond the limits set forth in paragraph (1) shall not be deemed a waiver of the limits set forth by paragraph (1) with respect to future requests for authorization.

(B) The Legislature finds and declares that the amendments made to subparagraph (A) by the act adding this subparagraph are declaratory of existing law.

(3) Paragraph (1) shall not apply to visits for postsurgical physical medicine and postsurgical rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to Section 5307.27.

(d) For all injuries not covered by the official utilization schedule adopted pursuant to Section 5307.27, authorized treatment shall be in accordance with other evidence-based medical treatment guidelines that are recognized generally by the national medical community and scientifically based.

(Amended by Stats. 2012, Ch. 363, Sec. 41. Effective January 1, 2013.)

4605. Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation. A qualified medical evaluator or authorized treating physician shall address any report procured pursuant to this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.

(Amended by Stats. 2012, Ch. 363, Sec. 42. Effective January 1, 2013.)

4606. Any county, city and county, city, school district, or other public corporation within the state which was a self-insured employer under the "Workmen's Compensation, Insurance and Safety Act," enacted by Chapter 176 of the Statutes of 1913, may provide such medical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, which is reasonably required to cure or relieve from the effects of an injury to a former employee who was covered under such act, without regard to the 90-day limitation of subdivision (a) of Section 15 of such act for medical treatment. The provisions of this section shall not be operative in any such county, city and county, city, school district, or other public corporation unless adopted by a resolution of the governing body of such public entity.

(Added by Stats. 1972, Ch. 451.)

4607. Where a party to a proceeding institutes proceedings to terminate an award made by the appeals board to an applicant for continuing medical treatment and is unsuccessful in such proceedings, the appeals board may determine the amount of attorney's fees reasonably incurred by the applicant in resisting the proceeding to terminate the medical treatment, and may assess such reasonable attorney's fees as a cost upon the party instituting the proceedings to terminate the award of the appeals board.

(Added by Stats. 1973, Ch. 663.)

4608. No workers' compensation insurer, self-insured employer, or agent of an insurer or self-insured employer, shall refuse to pay pharmacy benefits solely because the claim form utilized is reproduced by the person providing the pharmacy benefits, provided the reproduced form is an exact copy of that used by the insurer, self-insured employer, or agent.

(Added by Stats. 1984, Ch. 137, Sec. 1.)

4609. (a) In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in any payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed by the contracting agent to the provider in advance and shall actively encourage employees to use the network, unless the health care provider agrees to provide discounts without that active encouragement.

(b) Beginning July 1, 2000, every contracting agent that sells, leases, assigns, transfers, or conveys its list of contracted health care providers and their contracted reimbursement rates to a payor, as defined in subparagraph (A) of paragraph (3) of subdivision (d), or another contracting agent shall, upon entering or renewing a provider contract, do all of the following:

(1) Disclose whether the list of contracted providers may be sold, leased, transferred, or conveyed to other payors or other contracting agents, and specify whether those payors or contracting agents include workers' compensation insurers or automobile insurers.

(2) Disclose what specific practices, if any, payors utilize to actively encourage employees to use the list of contracted providers when obtaining medical care that entitles a payor to claim a contracted rate. For purposes of this paragraph, a payor is deemed to have actively encouraged employees to use the list of contracted providers if the employer provides information directly to employees during the period the employer has medical control advising them of the existence of the list of contracted providers through the use of a variety of advertising or marketing approaches that supply the names, addresses, and telephone numbers of contracted providers to employees; or in advance of a workplace injury, or upon notice of an injury or claim by an employee, the approaches may include, but are not limited to, the use of provider directories, the use of a list of all contracted providers in an area geographically accessible to the posting site, the use of wall cards that direct employees to a readily accessible listing of those providers at the same location as the wall cards, the use of wall cards that direct employees to a toll-free telephone number or Internet Web site address, or the use of toll-free telephone numbers or Internet Web site addresses supplied directly during the period the employer has medical control. However, Internet Web site addresses alone shall not be deemed to satisfy the requirements of this paragraph. Nothing in this paragraph shall prevent contracting agents or payors from providing only listings of providers located within a reasonable geographic range of an employee. A payor who otherwise meets the requirements of this paragraph is deemed to have met the requirements of this paragraph regardless of the employer's ability to control medical treatment pursuant to Sections 4600 and 4600.3.

(3) Disclose whether payors to which the list of contracted providers may be sold, leased, transferred, or conveyed may be permitted to pay a provider's contracted rate without actively encouraging the employees to use the list of contracted providers when obtaining medical care. Nothing in this subdivision shall be construed to require a payor to actively encourage the employees to use the list of contracted providers when obtaining medical care in the case of an emergency.

(4) Disclose, upon the initial signing of a contract, and within 15 business days of receipt of a written request from a provider or provider panel, a payor summary of all payors currently eligible to claim a provider's contracted rate due to the provider's and payor's respective written agreements with any contracting agent.

(5) Allow providers, upon the initial signing, renewal, or amendment of a provider contract, to decline to be included in any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the employees to use the list of contracted providers when obtaining medical care as described in paragraph (2). Each provider's election under this paragraph shall be binding on the contracting agent with which the provider has the contract and any other contracting agent that buys, leases, or otherwise obtains the list of contracted providers.

A provider shall not be excluded from any list of contracted providers that is sold, leased, transferred, or conveyed to payors that actively encourage the employees to use the list of contracted providers when obtaining medical care, based upon the provider's refusal to be included on any list of contracted providers that is sold, leased, transferred, or conveyed to payors that do not actively encourage the employees to use the list of contracted providers when obtaining medical care.

(6) If the payor's explanation of benefits or explanation of review does not identify the name of the network that has a written agreement signed by the provider whereby the payor is entitled, directly or indirectly, to pay a preferred rate for the services rendered, the contracting agent shall do the following:

(A) Maintain a Web site that is accessible to all contracted providers and updated at least quarterly and maintain a toll-free telephone number accessible to all contracted providers whereby providers may access payor summary information.

(B) Disclose through the use of an Internet Web site, a toll-free telephone number, or through a delivery or mail service to its contracted providers, within 30 days, any sale, lease assignment, transfer or conveyance of the contracted reimbursement rates to another contracting agent or payor.

(7) Nothing in this subdivision shall be construed to impose requirements or regulations upon payors, as defined in subparagraph (A) of paragraph (3) of subdivision (d).

(c) Beginning July 1, 2000, a payor, as defined in subparagraph (B) of paragraph (3) of subdivision (d), shall do all of the following:

(1) Provide an explanation of benefits or explanation of review that identifies the name of the network with which the payor has an agreement that entitles them to pay a preferred rate for the services rendered.

(2) Demonstrate that it is entitled to pay a contracted rate within 30 business days of receipt of a written request from a provider who has received a claim payment from the payor. The provider shall include in the request a statement explaining why the payment is not at the correct contracted rate for the services provided. The failure of the provider to include a statement shall relieve the payor from the responsibility of demonstrating that it is entitled to pay the disputed contracted rate. The failure of a payor to make the demonstration to a properly documented request of the provider within 30 business days shall render the payor responsible for the lesser of the provider's actual fee or, as applicable, any fee schedule pursuant to this division, which amount shall be due and payable within 10 days of receipt of written notice from the provider, and shall bar the payor from taking any future discounts from that provider without the provider's express written consent until the payor can demonstrate to the provider that it is entitled to pay a contracted rate as provided in this subdivision. A payor shall be deemed to have demonstrated that it is entitled to pay a contracted rate if it complies with either of the following:

(A) Describes the specific practices the payor utilizes to comply with paragraph (2) of subdivision (b), and demonstrates compliance with paragraph (1).

(B) Identifies the contracting agent with whom the payor has a written agreement whereby the payor is not required to actively encourage employees to use the list of contracted providers pursuant to paragraph (5) of subdivision (b).

(d) For the purposes of this section, the following terms have the following meanings:

(1) "Contracting agent" means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a health care service plan, including a specialized health care service plan, a preferred provider organization, or a self-insured employer, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying

a provider or provider panel to provide health care services to employees for work-related injuries.

(2) "Employee" means a person entitled to seek health care services for a work-related injury.

(3) (A) For the purposes of subdivision (b), "payor" means a health care service plan, including a specialized health care service plan, an insurer licensed under the Insurance Code to provide disability insurance that covers hospital, medical, or surgical benefits, automobile insurance, or workers' compensation insurance, or a self-insured employer that is responsible to pay for health care services provided to beneficiaries.

(B) For the purposes of subdivision (c), "payor" means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a self-insured employer, a third-party administrator or trust, or any other third party that is responsible to pay health care services provided to employees for work-related injuries, or an agent of an entity included in this definition.

(4) "Payor summary" means a written summary that includes the payor's name and the type of plan, including, but not limited to, a group health plan, an automobile insurance plan, and a workers' compensation insurance plan.

(5) "Provider" means any of the following:

(A) Any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(B) Any person licensed pursuant to the Chiropractic Initiative Act or the Osteopathic Initiative Act.

(C) Any person licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code.

(D) A clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(E) Any entity exempt from licensure pursuant to Section 1206 of the Health and Safety Code.

(e) This section shall become operative on July 1, 2000.

(Amended by Stats. 2001, Ch. 159, Sec. 159. Effective January 1, 2002.)

4610. (a) For purposes of this section, "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

(b) Each employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.

(c) Each utilization review process shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. These policies and procedures, and a description of the utilization process, shall be filed with the administrative director and shall be disclosed by the employer to employees, physicians, and the public upon request.

(d) Unless otherwise indicated in this section, a physician providing treatment under Section 4600 shall send any request for authorization for medical treatment, with supporting documentation, to the claims administrator for the employer, insurer, or other entity according to rules adopted by the administrative director. If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, or deny requests for authorization, that employer, insurer, or other entity shall request only the information reasonably necessary to make the determination. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, or denies requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services, complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

(e) A person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, if these services are within the scope of the physician's practice, requested by the physician, shall not modify or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

(f) The criteria or guidelines used in the utilization review process to determine whether to approve, modify, or deny medical treatment services shall be all of the following:

(1) Developed with involvement from actively practicing physicians.

(2) Consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27.

(3) Evaluated at least annually, and updated if necessary.

(4) Disclosed to the physician and the employee, if used as the basis of a decision to modify or deny services in a specified case under review.

(5) Available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public reasonable copying and postage expenses related to disclosing criteria or guidelines pursuant to this paragraph. Criteria or guidelines may also be made available through electronic means. A charge shall not be required for an employee whose physician's request for medical treatment services is under review.

(g) In determining whether to approve, modify, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees all of the following requirements shall be met:

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, a decision resulting in denial of all or part of the medical treatment service shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of the information that is reasonably necessary to make this determination. If payment for a medical treatment service is made within the time prescribed by Section 4603.2, a retrospective decision to approve the service need not otherwise be communicated.

(2) If the employee's condition is one in which the employee faces an imminent and serious threat to his or her health,

including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(3) (A) Decisions to approve, modify, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours of the decision. Decisions resulting in modification or denial of all or part of the requested health care service shall be communicated to physicians initially by telephone or facsimile, and to the physician and employee in writing within 24 hours for concurrent review, or within two business days of the decision for prospective review, as prescribed by the administrative director. If the request is not approved in full, disputes shall be resolved in accordance with Section 4610.5, if applicable, or otherwise in accordance with Section 4062.

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4610.5, if applicable, or otherwise pursuant to Section 4062. A compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in a way that minimizes reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. Fees shall not be levied upon insurers or self-insured employers making reports required by this section.

(4) Communications regarding decisions to approve requests by physicians shall specify the specific medical treatment service approved. Responses regarding decisions to modify or deny medical treatment services requested by physicians shall include a clear and concise explanation of the reasons for the employer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. If a utilization review decision to deny a medical service is due to incomplete or insufficient information, the decision shall specify the reason for the decision and specify the information that is needed.

(5) If the employer, insurer, or other entity cannot make a decision within the timeframes specified in paragraph (1) or (2) because the employer or other entity is not in receipt of all of the information reasonably necessary and requested, because the employer requires consultation by an expert reviewer, or because the employer has asked that an additional examination or test be performed upon the employee that is reasonable and consistent with good medical practice, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information requested but not received, the expert reviewer to be consulted, or the additional examinations or tests required. The employer shall also notify the physician and employee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).

(6) A utilization review decision to modify or deny a treatment recommendation shall remain effective for 12 months from the date of the decision without further action by the employer with regard to a further recommendation by the same physician for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision.

(7) Utilization review of a treatment recommendation shall not be required while the employer is disputing liability for injury or treatment of the condition for which treatment is recommended pursuant to Section 4062.

(8) If utilization review is deferred pursuant to paragraph (7), and it is finally determined that the employer is liable for treatment of the condition for which treatment is recommended, the time for the employer to conduct retrospective utilization review in accordance with paragraph (1) shall begin on the date the determination of the employer's liability becomes final, and the time for the employer to conduct prospective utilization review shall commence from the date of the employer's receipt of a treatment recommendation after the determination of the employer's liability.

(h) Each employer, insurer, or other entity subject to this section shall maintain telephone access for physicians to request authorization for health care services.

(i) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed to be an exclusive remedy for the administrative director. These penalties shall be deposited in the Workers' Compensation Administration Revolving Fund.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

(Amended by Stats. 2016, Ch. 885, Sec. 1.5. Effective January 1, 2017. Repealed as of January 1, 2018, by its own provisions. See later operative version added by Sec. 4.5 of Stats. 2016, Ch. 868.)

4610. (a) For purposes of this section, "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively,

or concurrent with the provision of medical treatment services pursuant to Section 4600.

(b) For all dates of injury occurring on or after January 1, 2018, emergency treatment services and medical treatment rendered for a body part or condition that is accepted as compensable by the employer and is addressed by the medical treatment utilization schedule adopted pursuant to Section 5307.7, by a member of the medical provider network or health care organization, or by a physician predesignated pursuant to subdivision (d) of Section 4600, within the 30 days following the initial date of injury, shall be authorized without prospective utilization review, except as provided in subdivision (c). The services rendered under this subdivision shall be consistent with the medical treatment utilization schedule. In the event that the employee is not subject to treatment with a medical provider network, health care organization, or predesignated physician pursuant to subdivision (d) of Section 4600, the employee shall be eligible for treatment under this section within 30 days following the initial date of injury if the treatment is rendered by a physician or facility selected by the employer. For treatment rendered by a medical provider network physician, health care organization physician, a physician predesignated pursuant to subdivision (d) of Section 4600, or an employer-selected physician, the report required under Section 6409 and a complete request for authorization shall be submitted by the physician within five days following the employee's initial visit and evaluation.

(c) Unless authorized by the employer or rendered as emergency medical treatment, the following medical treatment services, as defined in rules adopted by the administrative director, that are rendered through a member of the medical provider network or health care organization, a predesignated physician, an employer-selected physician, or an employer-selected facility, within the 30 days following the initial date of injury, shall be subject to prospective utilization review under this section:

(1) Pharmaceuticals, to the extent they are neither expressly exempted from prospective review nor authorized by the drug formulary adopted pursuant to Section 5307.27.

(2) Nonemergency inpatient and outpatient surgery, including all presurgical and postsurgical services.

(3) Psychological treatment services.

(4) Home health care services.

(5) Imaging and radiology services, excluding X-rays.

(6) All durable medical equipment, whose combined total value exceeds two hundred fifty dollars ($250), as determined by the official medical fee schedule.

(7) Electrodiagnostic medicine, including, but not limited to, electromyography and nerve conduction studies.

(8) Any other service designated and defined through rules adopted by the administrative director.

(d) Any request for payment for treatment provided under subdivision (b) shall comply with Section 4603.2 and be submitted to the employer, or its insurer or claims administrator, within 30 days of the date the service was provided.

(e) If a physician fails to submit the report required under Section 6409 and a complete request for authorization, as described in subdivision (b), an employer may remove the physician's ability under this subdivision to provide further medical treatment to the employee that is exempt from prospective utilization review.

(f) An employer may perform retrospective utilization review for any treatment provided pursuant to subdivision (b) solely for the purpose of determining if the physician is prescribing treatment consistent with the schedule for medical treatment utilization, including, but not limited to, the drug formulary adopted pursuant to Section 5307.27.

(1) If it is found after retrospective utilization reviews that there is a pattern and practice of the physician or provider failing to render treatment consistent with the schedule for medical treatment utilization, including the drug formulary, the employer may remove the ability of the predesignated physician, employer-selected physician, or the member of the medical provider network or health care organization under this subdivision to provide further medical treatment to any employee that is exempt from prospective utilization review. The employer shall notify the physician or provider of the results of the retrospective utilization review and the requirement for prospective utilization review for all subsequent medical treatment.

(2) The results of retrospective utilization review may constitute a showing of good cause for an employer's petition requesting a change of physician or provider pursuant to Section 4603 and may serve as grounds for termination of the physician or provider from the medical provider network or health care organization.

(g) Each employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.

(1) Each utilization review process that modifies or denies requests for authorization of medical treatment shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization, including the drug formulary, adopted pursuant to Section 5307.27.

(2) Unless otherwise indicated in this section, a physician providing treatment under Section 4600 shall send any request for authorization for medical treatment, with supporting documentation, to the claims administrator for the employer, insurer, or other entity according to rules adopted by the administrative director. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, or denies requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

(3) (A) A person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, if these services are within the scope of the physician's practice, requested by the physician, shall not modify or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve or due to incomplete or insufficient information under subdivisions (i) and (j).

(B) (i) The employer, or any entity conducting utilization review on behalf of the employer, shall neither offer nor provide any financial incentive or consideration to a physician based on the number of modifications or denials made by the physician under this section.

(ii) An insurer or third-party administrator shall not refer utilization review services conducted on behalf of an employer under this section to an entity in which the insurer or third-party administrator has a financial interest as defined under Section 139.32. This prohibition does not apply if the insurer or third-party administrator provides the employer and the administrative director with prior written disclosure of both of the following:

(I) The entity conducting the utilization review services.

(II) The insurer or third-party administrator's financial interest in the entity.

(C) The administrative director has authority pursuant to this section to review any compensation agreement, payment schedule, or contract between the employer, or any entity conducting utilization review on behalf of the employer, and the utilization review physician. Any information disclosed to the administrative director pursuant to this paragraph shall be considered confidential information and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Disclosure of the information to the administrative director pursuant to this subdivision shall not waive the provisions of the Evidence Code relating to privilege.

(4) A utilization review process that modifies or denies requests for authorization of medical treatment shall be accredited on or before July 1, 2018, and shall retain active accreditation while providing utilization review services, by an independent, nonprofit organization to certify that the utilization review process meets specified criteria, including, but not limited to, timeliness in issuing a utilization review decision, the scope of medical material used in issuing a utilization review decision, peer-to-peer consultation, internal appeal procedure, and requiring a policy preventing financial incentives to doctors and other providers based on the utilization review decision. The administrative director shall adopt rules to implement the selection of an independent, nonprofit organization for those accreditation purposes. Until those rules are adopted, the administrative director shall designate URAC as the accrediting organization. The administrative director may adopt rules to do any of the following:

(A) Require additional specific criteria for measuring the quality of a utilization review process for purposes of accreditation.

(B) Exempt nonprofit, public sector internal utilization review programs from the accreditation requirement pursuant to this section, if the administrative director has adopted minimum standards applicable to nonprofit, public sector internal utilization review programs that meet or exceed the accreditation standards developed pursuant to this section.

(5) On or before July 1, 2018, each employer, either directly or through its insurer or an entity with which an employer or insurer contracts for utilization review services, shall submit a description of the utilization review process that modifies or denies requests for authorization of medical treatment and the written policies and procedures to the administrative director for approval. Approved utilization review process descriptions and the accompanying written policies and procedures shall be disclosed by the employer to employees and physicians and made available to the public by posting on the employer's, claims administrator's, or utilization review organization's Internet Web site.

(h) The criteria or guidelines used in the utilization review process to determine whether to approve, modify, or deny medical treatment services shall be all of the following:

(1) Developed with involvement from actively practicing physicians.

(2) Consistent with the schedule for medical treatment utilization, including the drug formulary, adopted pursuant to Section 5307.27.

(3) Evaluated at least annually, and updated if necessary.

(4) Disclosed to the physician and the employee, if used as the basis of a decision to modify or deny services in a specified case under review.

(5) Available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public reasonable copying and postage expenses related to disclosing criteria or guidelines pursuant to this paragraph. Criteria or guidelines may also be made available through electronic means. A charge shall not be required for an employee whose physician's request for medical treatment services is under review.

(i) In determining whether to approve, modify, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees, all of the following requirements shall be met:

(1) Except for treatment requests made pursuant to the formulary, prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of a request for authorization for medical treatment and supporting information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. Prospective decisions regarding requests for treatment covered by the formulary shall be made no more than five working days from the date of receipt of the medical treatment request. The request for authorization and supporting documentation may be submitted electronically under rules adopted by the administrative director.

(2) In cases where the review is retrospective, a decision resulting in denial of all or part of the medical treatment service shall be communicated to the individual who received services, or to the individual's designee, within 30 days of the receipt of the information that is reasonably necessary to make this determination. If payment for a medical treatment service is made within the time prescribed by Section 4603.2, a retrospective decision to approve the service need not otherwise be communicated.

(3) If the employee's condition is one in which the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(4) (A) Final decisions to approve, modify, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours

of the decision by telephone, facsimile, or, if agreed to by the parties, secure email.

(B) Decisions resulting in modification or denial of all or part of the requested health care service shall be communicated in writing to the employee, and to the physician if the initial communication under subparagraph (A) was by telephone, within 24 hours for concurrent review, or within two business days of the decision for prospective review, as prescribed by the administrative director. If the request is modified or denied, disputes shall be resolved in accordance with Section 4610.5, if applicable, or otherwise in accordance with Section 4062.

(C) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4610.5, if applicable, or otherwise pursuant to Section 4062. A compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in a way that minimizes reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. Fees shall not be levied upon insurers or self-insured employers making reports required by this section.

(5) Communications regarding decisions to approve requests by physicians shall specify the specific medical treatment service approved. Responses regarding decisions to modify or deny medical treatment services requested by physicians shall include a clear and concise explanation of the reasons for the employer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. If a utilization review decision to deny a medical service is due to incomplete or insufficient information, the decision shall specify all of the following:

(A) The reason for the decision.

(B) A specific description of the information that is needed.

(C) The date(s) and time(s) of attempts made to contact the physician to obtain the necessary information.

(D) A description of the manner in which the request was communicated.

(j) (1) Unless otherwise indicated in this section, a physician providing treatment under Section 4600 shall send any request for authorization for medical treatment, with supporting documentation, to the claims administrator for the employer, insurer, or other entity according to rules adopted by the administrative director. If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, or deny requests for authorization, that employer, insurer, or other entity shall request only the information reasonably necessary to make the determination.

(2) If the employer, insurer, or other entity cannot make a decision within the timeframes specified in paragraph (1), (2), or (3) of subdivision (i) because the employer or other entity is not in receipt of, or in possession of, all of the information reasonably necessary to make a determination, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information that must be provided by the physician for a determination to be made. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1), (2), or (3) of subdivision (i).

(k) A utilization review decision to modify or deny a treatment recommendation shall remain effective for 12 months from the date of the decision without further action by the employer with regard to a further recommendation by the same physician, or another physician within the requesting physician's practice group, for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision.

(l) Utilization review of a treatment recommendation shall not be required while the employer is disputing liability for injury or treatment of the condition for which treatment is recommended pursuant to Section 4062.

(m) If utilization review is deferred pursuant to subdivision (l), and it is finally determined that the employer is liable for treatment of the condition for which treatment is recommended, the time for the employer to conduct retrospective utilization review in accordance with paragraph (2) of subdivision (i) shall begin on the date the determination of the employer's liability becomes final, and the time for the employer to conduct prospective utilization review shall commence from the date of the employer's receipt of a treatment recommendation after the determination of the employer's liability.

(n) Each employer, insurer, or other entity subject to this section shall maintain telephone access during California business hours for physicians to request authorization for health care services and to conduct peer-to-peer discussions regarding issues, including the appropriateness of a requested treatment, modification of a treatment request, or obtaining additional information needed to make a medical necessity decision.

(o) The administrative director shall develop a system for the mandatory electronic reporting of documents related to every utilization review performed by each employer, which shall be administered by the Division of Workers' Compensation. The administrative director shall adopt regulations specifying the documents to be submitted by the employer and the authorized transmission format and timeframe for their submission. For purposes of this subdivision, "employer" means the employer, the insurer of an insured employer, a claims administrator, or a utilization review organization, or other entity acting on behalf of any of them.

(p) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed to

be an exclusive remedy for the administrative director. These penalties shall be deposited in the Workers' Compensation Administration Revolving Fund.

(q) The administrative director shall contract with an outside, independent research organization on or after March 1, 2019, to evaluate the impact of the provision of medical treatment within the first 30 days after a claim is filed, for a claim filed on or after January 1, 2017, and before January 1, 2019. The report shall be provided to the administrative director, the Senate Committee on Labor and Industrial Relations, and the Assembly Committee on Insurance before January 1, 2020.

(r) This section shall become operative on January 1, 2018.

(Repealed (in Sec. 1.5 of Ch. 885) and added by Stats. 2016, Ch. 868, Sec. 4.5. Effective January 1, 2017. Section operative January 1, 2018, by its own provisions.)

4610.1. An employee shall not be entitled to an increase in compensation under Section 5814 for unreasonable delay in the provision of medical treatment for periods of time necessary to complete the utilization review process in compliance with Section 4610. A determination by the appeals board or a final determination of the administrative director pursuant to independent medical review that medical treatment is appropriate shall not be conclusive evidence that medical treatment was unreasonably delayed or denied for purposes of penalties under Section 5814. In no case shall this section preclude an employee from entitlement to an increase in compensation under Section 5814 when an employer has unreasonably delayed or denied medical treatment due to an unreasonable delay in completion of the utilization review process set forth in Section 4610.

(Amended by Stats. 2012, Ch. 363, Sec. 44. Effective January 1, 2013.)

4610.3. (a) Regardless of whether an employer has established a medical provider network pursuant to Section 4616 or entered into a contract with a health care organization pursuant to Section 4600.5, an employer that authorizes medical treatment shall not rescind or modify that authorization after the medical treatment has been provided based on that authorization for any reason, including, but not limited to, the employer's subsequent determination that the physician who treated the employee was not eligible to treat that injured employee. If the authorized medical treatment consists of a series of treatments or services, the employer may rescind or modify the authorization only for the treatments or services that have not already been provided.

(b) This section shall not be construed to expand or alter the benefits available under, or the terms and conditions of, any contract, including, but not limited to, existing medical provider network and health care organization contracts.

(c) This section shall not be construed to impact the ability of the employer to transfer treatment of an injured employee into a medical provider network or health care organization. This subdivision is declaratory of existing law.

(d) This section shall not be construed to establish that a provider of authorized medical treatment is the physician primarily responsible for managing the injured employee's care for purposes of rendering opinions on all medical issues necessary to determine eligibility for compensation.

(Added by Stats. 2009, Ch. 436, Sec. 1. Effective January 1, 2010.)

4610.5. (a) This section applies to the following disputes:

(1) Any dispute over a utilization review decision regarding treatment for an injury occurring on or after January 1, 2013.

(2) Any dispute over a utilization review decision if the decision is communicated to the requesting physician on or after July 1, 2013, regardless of the date of injury.

(3) Any dispute occurring on or after January 1, 2018, over medication prescribed pursuant to the drug formulary adopted pursuant to Section 5307.27.

(b) A dispute described in subdivision (a) shall be resolved only in accordance with this section.

(c) For purposes of this section and Section 4610.6, the following definitions apply:

(1) "Disputed medical treatment" means medical treatment that has been modified or denied by a utilization review decision on the basis of medical necessity.

(2) "Medically necessary" and "medical necessity" mean medical treatment that is reasonably required to cure or relieve the injured employee of the effects of his or her injury and based on the following standards, which shall be applied as set forth in the medical treatment utilization schedule, including the drug formulary, adopted by the administrative director pursuant to Section 5307.27:

(A) The guidelines, including the drug formulary, adopted by the administrative director pursuant to Section 5307.27.

(B) Peer-reviewed scientific and medical evidence regarding the effectiveness of the disputed service.

(C) Nationally recognized professional standards.

(D) Expert opinion.

(E) Generally accepted standards of medical practice.

(F) Treatments that are likely to provide a benefit to a patient for conditions for which other treatments are not clinically efficacious.

(3) "Utilization review decision" means a decision pursuant to Section 4610 to modify or deny, based in whole or in part on medical necessity to cure or relieve, a treatment recommendation or recommendations by a physician prior to, retrospectively, or concurrent with, the provision of medical treatment services pursuant to Section 4600 or subdivision (c) of Section 5402. "Utilization review decision" may also mean a determination, occurring on or after January 1, 2018, by a physician regarding the medical necessity of medication prescribed pursuant to the drug formulary adopted pursuant to Section 5307.27.

(4) Unless otherwise indicated by context, "employer" means the employer, the insurer of an insured employer, a claims administrator, or a utilization review organization, or other entity acting on behalf of any of them.

(d) If a utilization review decision denies or modifies a treatment recommendation based on medical necessity, the employee may request an independent medical review as provided by this section.

(e) A utilization review decision may be reviewed or appealed only by independent medical review pursuant to this section. Neither the employee nor the employer shall have any liability for medical treatment furnished without the authorization of the employer if the treatment is modified or denied by a utilization review decision, unless the utilization review decision is overturned by independent medical review in accordance with this section.

(f) As part of its notification to the employee regarding an initial utilization review decision based on medical necessity that denies or modifies a treatment recommendation, the employer shall provide the employee with a one-page form prescribed by the administrative director, and an addressed envelope, which the employee may return to the administrative director or the administrative director's designee to initiate an independent medical review. The employee may also request independent medical review electronically under rules adopted

by the administrative director. The employer shall include on the form any information required by the administrative director to facilitate the completion of the independent medical review. The form shall also include all of the following:

(1) Notice that the utilization review decision is final unless the employee requests independent medical review.

(2) A statement indicating the employee's consent to obtain any necessary medical records from the employer or insurer and from any medical provider the employee may have consulted on the matter, to be signed by the employee.

(3) Notice of the employee's right to provide information or documentation, either directly or through the employee's physician, regarding the following:

(A) The treating physician's recommendation indicating that the disputed medical treatment is medically necessary for the employee's medical condition.

(B) Medical information or justification that a disputed medical treatment, on an urgent care or emergency basis, was medically necessary for the employee's medical condition.

(C) Reasonable information supporting the employee's position that the disputed medical treatment is or was medically necessary for the employee's medical condition, including all information provided to the employee by the employer or by the treating physician, still in the employee's possession, concerning the employer's or the physician's decision regarding the disputed medical treatment, as well as any additional material that the employee believes is relevant.

(g) The independent medical review process may be terminated at any time upon the employer's written authorization of the disputed medical treatment. Notice of the authorization, any settlement or award that may resolve the medical treatment dispute, or the requesting physician withdrawing the request for treatment, shall be communicated to the independent medical review organization by the employer within five days.

(h) (1) The employee may submit a request for independent medical review to the division. The request may be made electronically under rules adopted by the administrative director. The request shall be made no later than as follows:

(A) For formulary disputes, 10 days after the service of the utilization review decision to the employee.

(B) For all other medical treatment disputes, 30 days after the service of the utilization review decision to the employee.

(2) If at the time of a utilization review decision the employer is also disputing liability for the treatment for any reason besides medical necessity, the time for the employee to submit a request for independent medical review to the administrative director or administrative director's designee is extended to 30 days after service of a notice to the employee showing that the other dispute of liability has been resolved.

(3) If the employer fails to comply with subdivision (f) at the time of notification of its utilization review decision, the time limitations for the employee to submit a request for independent medical review shall not begin to run until the employer provides the required notice to the employee.

(4) A provider of emergency medical treatment when the employee faced an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, may submit a request for independent medical review on its own behalf. A request submitted by a provider pursuant to this paragraph shall be submitted to the administrative director or administrative director's designee within the time limitations applicable for an employee to submit a request for independent medical review.

(i) An employer shall not engage in any conduct that has the effect of delaying the independent review process. Engaging in that conduct or failure of the employer to promptly comply with this section is a violation of this section and, in addition to any other fines, penalties, and other remedies available to the administrative director, the employer shall be subject to an administrative penalty in an amount determined pursuant to regulations to be adopted by the administrative director, not to exceed five thousand dollars ($5,000) for each day that proper notification to the employee is delayed. The administrative penalties shall be paid to the Workers' Compensation Administration Revolving Fund.

(j) For purposes of this section, an employee may designate a parent, guardian, conservator, relative, or other designee of the employee as an agent to act on his or her behalf. A designation of an agent executed prior to the utilization review decision shall not be valid. The requesting physician may join with or otherwise assist the employee in seeking an independent medical review, and may advocate on behalf of the employee.

(k) The administrative director or his or her designee shall expeditiously review requests and immediately notify the employee and the employer in writing as to whether the request for an independent medical review has been approved, in whole or in part, and, if not approved, the reasons therefor. If there appears to be any medical necessity issue, the dispute shall be resolved pursuant to an independent medical review, except that, unless the employer agrees that the case is eligible for independent medical review, a request for independent medical review shall be deferred if at the time of a utilization review decision the employer is also disputing liability for the treatment for any reason besides medical necessity.

(l) Upon notice from the administrative director that an independent review organization has been assigned, the employer shall electronically provide to the independent medical review organization under rules adopted by the administrative director a copy and list of all of the following documents within 10 days of notice of assignment:

(1) A copy of all of the employee's medical records in the possession of the employer or under the control of the employer relevant to each of the following:

(A) The employee's current medical condition.

(B) The medical treatment being provided by the employer.

(C) The request for authorization and utilization review decision.

(2) A copy of all information provided to the employee by the employer concerning employer and provider decisions regarding the disputed treatment.

(3) A copy of any materials the employee or the employee's provider submitted to the employer in support of the employee's request for the disputed treatment.

(4) A copy of any other relevant documents or information used by the employer or its utilization review organization in determining whether the disputed treatment should have been provided, and any statements by the employer or its utilization review organization explaining the reasons for the decision to deny or modify the recommended treatment on the basis of medical necessity. The employer shall concurrently provide a copy of the documents required by this paragraph to the employee and the requesting physician, except that documents previously provided to the employee or physician need not be provided again if a list of those documents is provided.

(m) Any newly developed or discovered relevant medical records in the possession of the employer after the initial documents are provided to the independent medical review organization shall be forwarded immediately to the independent medical review organization. The employer shall concurrently provide a copy of medical records required by this subdivision to the employee or the employee's treating physician, unless the offer of medical records is declined or otherwise prohibited by law. The confidentiality of medical records shall be maintained pursuant to applicable state and federal laws.

(n) If there is an imminent and serious threat to the health of the employee, as specified in subdivision (c) of Section 1374.33 of the Health and Safety Code, all necessary information and documents required by subdivision (l) shall be delivered to the independent medical review organization within 24 hours of approval of the request for review.

(o) The employer shall promptly issue a notification to the employee, after submitting all of the required material to the independent medical review organization, that lists documents submitted and includes copies of material not previously provided to the employee or the employee's designee.

(p) The claims administrator who issued the utilization review decision in dispute shall notify the independent medical review organization if there is a change in the claims administrator responsible for the claim. Notice shall be given to the independent medical review organization within five working days of the change in administrator taking effect.

(Amended by Stats. 2016, Ch. 868, Sec. 5. Effective January 1, 2017.)

4610.6. (a) Upon receipt of a case pursuant to Section 4610.5, an independent medical review organization shall conduct the review in accordance with this article and any regulations or orders of the administrative director. The organization's review shall be limited to an examination of the medical necessity of the disputed medical treatment.

(b) Upon receipt of information and documents related to a case, the medical reviewer or reviewers selected to conduct the review by the independent medical review organization shall promptly review all pertinent medical records of the employee, provider reports, and any other information submitted to the organization or requested from any of the parties to the dispute by the reviewers. If the reviewers request information from any of the parties, a copy of the request and the response shall be provided to all of the parties. The reviewer or reviewers shall also review relevant information related to the criteria set forth in subdivision (c).

(c) Following its review, the reviewer or reviewers shall determine whether the disputed health care service was medically necessary based on the specific medical needs of the employee and the standards of medical necessity as defined in subdivision (c) of Section 4610.5.

(d) (1) The organization shall complete its review and make its determination in writing, and in layperson's terms to the maximum extent practicable, and the determination shall be issued, as follows:

(A) For a dispute over medication prescribed pursuant to the drug formulary submitted under subdivision (h) of Section 4610.5, within five working days from the date of receipt of the request for review and supporting documentation, or within less time as prescribed by the administrative director.

(B) For all other medical treatment disputes submitted for review under subdivision (h) of Section 4610.5, within 30 days of receipt of the request for review and supporting documentation, or within less time as prescribed by the administrative director.

(C) If the disputed medical treatment has not been provided and the employee's provider or the administrative director certifies in writing that an imminent and serious threat to the health of the employee may exist, including, but not limited to, serious pain, the potential loss of life, limb, or major bodily function, or the immediate and serious deterioration of the health of the employee, the analyses and determinations of the reviewers shall be expedited and rendered within three days of the receipt of the information.

(2) Subject to the approval of the administrative director, the deadlines for analyses and determinations involving both regular and expedited reviews may be extended for up to three days in extraordinary circumstances or for good cause.

(e) The medical professionals' analyses and determinations shall state whether the disputed health care service is medically necessary. Each analysis shall cite the employee's medical condition, the relevant documents in the record, and the relevant findings associated with the provisions of subdivision (c) to support the determination. If more than one medical professional reviews the case, the recommendation of the majority shall prevail. If the medical professionals reviewing the case are evenly split as to whether the disputed health care service should be provided, the decision shall be in favor of providing the service.

(f) The independent medical review organization shall provide the administrative director, the employer, the employee, and the employee's provider with the analyses and determinations of the medical professionals reviewing the case, and a description of the qualifications of the medical professionals. The independent medical review organization shall keep the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization. If more than one medical professional reviewed the case and the result was differing determinations, the independent medical review organization shall provide each of the separate reviewer's analyses and determinations.

(g) The determination of the independent medical review organization shall be deemed to be the determination of the administrative director and shall be binding on all parties.

(h) A determination of the administrative director pursuant to this section may be reviewed only by a verified appeal from the medical review determination of the administrative director, filed with the appeals board for hearing pursuant to Chapter 3 (commencing with Section 5500) of Part 4 and served on all interested parties within 30 days of the date of mailing of the determination to the aggrieved employee or the aggrieved employer. The determination of the administrative director shall be presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the following grounds for appeal:

(1) The administrative director acted without or in excess of the administrative director's powers.

(2) The determination of the administrative director was procured by fraud.

(3) The independent medical reviewer was subject to a material conflict of interest that is in violation of Section 139.5.

(4) The determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability.

(5) The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of

fact is a matter of ordinary knowledge based on the information submitted for review pursuant to Section 4610.5 and not a matter that is subject to expert opinion.

(i) If the determination of the administrative director is reversed, the dispute shall be remanded to the administrative director to submit the dispute to independent medical review by a different independent review organization. In the event that a different independent medical review organization is not available after remand, the administrative director shall submit the dispute to the original medical review organization for review by a different reviewer in the organization. In no event shall a workers' compensation administrative law judge, the appeals board, or any higher court make a determination of medical necessity contrary to the determination of the independent medical review organization.

(j) Upon receiving the determination of the administrative director that a disputed health care service is medically necessary, the employer shall promptly implement the decision as provided by this section unless the employer has also disputed liability for any reason besides medical necessity. In the case of reimbursement for services already rendered, the employer shall reimburse the provider or employee, whichever applies, within 20 days, subject to resolution of any remaining issue of the amount of payment pursuant to Sections 4603.2 to 4603.6, inclusive. In the case of services not yet rendered, the employer shall authorize the services within five working days of receipt of the written determination from the independent medical review organization, or sooner if appropriate for the nature of the employee's medical condition, and shall inform the employee and provider of the authorization.

(k) Failure to pay for services already provided or to authorize services not yet rendered within the time prescribed by subdivision (l) is a violation of this section and, in addition to any other fines, penalties, and other remedies available to the administrative director, the employer shall be subject to an administrative penalty in an amount determined pursuant to regulations to be adopted by the administrative director, not to exceed five thousand dollars ($5,000) for each day the decision is not implemented. The administrative penalties shall be paid to the Workers' Compensation Administration Revolving Fund.

(l) The costs of independent medical review and the administration of the independent medical review system shall be borne by employers through a fee system established by the administrative director. After considering any relevant information on program costs, the administrative director shall establish a reasonable, per-case reimbursement schedule to pay the costs of independent medical review organization reviews and the cost of administering the independent medical review system, which may vary depending on the type of medical condition under review and on other relevant factors.

(m) The administrative director may publish the results of independent medical review determinations after removing individually identifiable information.

(n) If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application of its provisions to other persons or circumstances, shall not be affected thereby.

(Amended by Stats. 2016, Ch. 868, Sec. 6. Effective January 1, 2017.)

4611. (a) When a contracting agent sells, leases, or transfers a health provider's contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Contracting agent" has the meaning set forth in paragraph (2) of subdivision (d) of Section 4609.

(2) "Payor" has the meaning set forth in paragraph (3) of subdivision (d) of Section 4609.

(Added by renumbering Section 4610 (as added by Stats. 2003, Ch. 203) by Stats. 2004, Ch. 183, Sec. 264. Effective January 1, 2005.)

4614. (a) (1) Notwithstanding Section 5307.1, where the employee's individual or organizational provider of health care services rendered under this division and paid on a fee-for-service basis is also the provider of health care services under contract with the employee's health benefit program, and the service or treatment provided is included within the range of benefits of the employee's health benefit program, and paid on a fee-for-service basis, the amount of payment for services provided under this division, for a work-related occurrence or illness, shall be no more than the amount that would have been paid for the same services under the health benefit plan, for a non-work-related occurrence or illness.

(2) A health care service plan that arranges for health care services to be rendered to an employee under this division under a contract, and which is also the employee's organizational provider for nonoccupational injuries and illnesses, with the exception of a nonprofit health care service plan that exclusively contracts with a medical group to provide or arrange for medical services to its enrollees in a designated geographic area, shall be paid by the employer for services rendered under this division only on a capitated basis.

(b) (1) Where the employee's individual or organizational provider of health care services rendered under this division who is not providing services under a contract is not the provider of health care services under contract with the employee's health benefit program or where the services rendered under this division are not within the benefits provided under the employer-sponsored health benefit program, the provider shall receive payment that is no more than the average of the payment that would have been paid by five of the largest preferred provider organizations by geographic region. Physicians, as defined in Section 3209.3, shall be reimbursed at the same averaged rates, regardless of licensure, for the delivery of services under the same procedure code. This subdivision shall not apply to a health care service plan that provides its services on a capitated basis.

(2) The administrative director shall identify the regions and the five largest carriers in each region. The carriers shall provide the necessary information to the administrative director in the form and manner requested by the administrative director. The administrative director shall make this information available to the affected providers on an annual basis.

(c) Nothing in this section shall prohibit an individual or organizational health care provider from being paid fees different from those set forth in the official medical fee schedule by an employer, insurance carrier, third-party administrator on behalf of employers, or preferred provider organization representing an employer or insurance carrier provided that the administrative director has determined that the alternative negotiated rates between the organizational or individual provider and a payer, a third-party administrator on behalf of employers, or a preferred provider organization will produce greater savings in the aggregate than if each item on billings were to be charged at the scheduled rate.

(d) For the purposes of this section, "organizational provider" means an entity that arranges for health care services to be rendered directly by individual caregivers. An organizational provider may be a health care service plan, disability insurer, health care organization, preferred provider organization, or workers' compensation insurer arranging for care through a managed care network or on a fee-for-service basis. An individual provider is either an individual or institution that provides care directly to the injured worker.

(Amended by Stats. 2002, Ch. 866, Sec. 11. Effective January 1, 2003.)

4614.1. Notwithstanding subdivision (f) of Section 1345 of the Health and Safety Code, a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act and certified by the administrative director pursuant to Section 4600.5 to provide health care pursuant to Section 4600.3 shall be permitted to accept payment from a self-insured employer, a group of self-insured employers, or the insurer of an employer on a fee-for-service basis for the provision of such health care as long as the health care service plan is not both the health care organization in which the employee is enrolled and the plan through which the employee receives regular health benefits.

(Amended by Stats. 1993, Ch. 1242, Sec. 35. Effective January 1, 1994.)

4615. (a) Any lien filed by or on behalf of a physician or provider of medical treatment services under Section 4600 or medical-legal services under Section 4621, and any accrual of interest related to the lien, shall be automatically stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. The stay shall be in effect from the time of the filing of the charges until the disposition of the criminal proceedings. The administrative director may promulgate rules for the implementation of this section.

(b) The administrative director shall promptly post on the division's Internet Web site the names of any physician or provider of medical treatment services whose liens were stayed pursuant to this section.

(Added by Stats. 2016, Ch. 868, Sec. 7. Effective January 1, 2017.)

Article 2.3. Medical Provider Networks

(Article 2.3 added by Stats. 2004, Ch. 34, Sec. 27.)

4616. (a) (1) On or after January 1, 2005, an insurer, employer, or entity that provides physician network services may establish or modify a medical provider network for the provision of medical treatment to injured employees. The network shall include physicians primarily engaged in the treatment of occupational injuries. The administrative director shall encourage the integration of occupational and nonoccupational providers. The number of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner. The provider network shall include an adequate number and type of physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed.

(2) Medical treatment for injuries shall be readily available at reasonable times to all employees. To the extent feasible, all medical treatment for injuries shall be readily accessible to all employees. With respect to availability and accessibility of treatment, the administrative director shall consider the needs of rural areas, specifically those in which health facilities are located at least 30 miles apart and areas in which there is a health care shortage.

(3) Commencing January 1, 2014, a treating physician shall be included in the network only if, at the time of entering into or renewing an agreement by which the physician would be in the network, the physician, or an authorized employee of the physician or the physician's office, provides a separate written acknowledgment in which the physician affirmatively elects to be a member of the network. Copies of the written acknowledgment shall be provided to the administrative director upon the administrative director's request. This paragraph shall not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to be part of the network.

(4) (A) Commencing January 1, 2014, every medical provider network shall post on its Internet Web site a roster of all treating physicians in the medical provider network and shall update the roster at least quarterly. Every network shall provide to the administrative director the Internet Web site address of the network and of its roster of treating physicians. The administrative director shall post, on the division's Internet Web site, the Internet Web site address of every approved medical provider network.

(B) Commencing January 1, 2016, every medical provider network shall post on its Internet Web site information about how to contact the medical provider network contact and medical access assistants, and information about how to obtain a copy of any notification regarding the medical provider network that is required to be given to an employee by regulations adopted by the administrative director.

(5) Commencing January 1, 2014, every medical provider network shall provide one or more persons within the United States to serve as medical access assistants to help an injured employee find an available physician of the employee's choice, and subsequent physicians if necessary, under Section 4616.3. Medical access assistants shall have a toll-free telephone number that injured employees may use and shall be available at least from 7 a.m. to 8 p.m. Pacific Standard Time, Monday through Saturday, inclusive, to respond to injured employees, contact physicians' offices during regular business hours, and schedule appointments. The administrative director shall promulgate regulations on or before July 1, 2013, governing the provision of medical access assistants.

(b) (1) An insurer, employer, or entity that provides physician network services shall submit a plan for the medical provider network to the administrative director for approval. The administrative director shall approve the plan for a period of four years if he or she determines that the plan meets the requirements of this section. If the administrative director does not act on the plan within 60 days of submitting the plan, it shall be deemed approved. Commencing January 1, 2014, existing approved plans shall be deemed approved for a period of four years from the approval date of the most recent application or modification submitted prior to 2014. Plans for reapproval for medical provider networks shall be submitted at least six months before the expiration of the four-year approval period. Commencing January 1, 2016, a modification that updates an entire medical provider network plan to bring the plan into full compliance with all current statutes and regulations shall be deemed approved for a period of four years from the modification approval date. An approved modification that does not update an entire medical provider network plan to bring the plan into full compliance with all current statutes and regulations shall not alter the expiration

of the medical provider network's four-year approval period. Upon a showing that the medical provider network was approved or deemed approved by the administrative director, there shall be a conclusive presumption on the part of the appeals board that the medical provider network was validly formed.

(2) Every medical provider network shall establish and follow procedures to continuously review the quality of care, performance of medical personnel, utilization of services and facilities, and costs.

(3) Every medical provider network shall submit geocoding of its network for reapproval to establish that the number and geographic location of physicians in the network meets the required access standards.

(4) The administrative director shall at any time have the discretion to investigate complaints and to conduct random reviews of approved medical provider networks.

(5) Approval of a plan may be denied, revoked, or suspended if the medical provider network fails to meet the requirements of this article. Any person contending that a medical provider network is not validly constituted may petition the administrative director to suspend or revoke the approval of the medical provider network. The administrative director may adopt regulations establishing a schedule of administrative penalties not to exceed five thousand dollars ($5,000) per violation, or probation, or both, in lieu of revocation or suspension for less severe violations of the requirements of this article. Penalties, probation, suspension, or revocation shall be ordered by the administrative director only after notice and opportunity to be heard. Unless suspended or revoked by the administrative director, the administrative director's approval of a medical provider network shall be binding on all persons and all courts. A determination of the administrative director may be reviewed only by an appeal of the determination of the administrative director filed as an original proceeding before the reconsideration unit of the workers' compensation appeals board on the same grounds and within the same time limits after issuance of the determination as would be applicable to a petition for reconsideration of a decision of a workers' compensation administrative law judge.

(c) Physician compensation may not be structured in order to achieve the goal of reducing, delaying, or denying medical treatment or restricting access to medical treatment.

(d) If the employer or insurer meets the requirements of this section, the administrative director may not withhold approval or disapprove an employer's or insurer's medical provider network based solely on the selection of providers. In developing a medical provider network, an employer or insurer shall have the exclusive right to determine the members of their network.

(e) All treatment provided shall be provided in accordance with the medical treatment utilization schedule established pursuant to Section 5307.27.

(f) No person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, when these services are within the scope of the physician's practice, may modify, delay, or deny requests for authorization of medical treatment.

(g) Commencing January 1, 2013, every contracting agent that sells, leases, assigns, transfers, or conveys its medical provider networks and their contracted reimbursement rates to an insurer, employer, entity that provides physician network services, or another contracting agent shall, upon entering or renewing a provider contract, disclose to the provider whether the medical provider network may be sold, leased, transferred, or conveyed to other insurers, employers, entities that provide physician network services, or another contracting agent, and specify whether those insurers, employers, entities that provide physician network services, or contracting agents include workers' compensation insurers.

(h) On or before November 1, 2004, the administrative director, in consultation with the Department of Managed Health Care, shall adopt regulations implementing this article. The administrative director shall develop regulations that establish procedures for purposes of making medical provider network modifications.

(Amended by Stats. 2015, Ch. 542, Sec. 1. Effective January 1, 2016.)

4616.1. (a) An insurer, employer, or entity that provides physician network services that offers a medical provider network under this division and that uses economic profiling shall file with the administrative director a description of any policies and procedures related to economic profiling utilized. The filing shall describe how these policies and procedures are used in utilization review, peer review, incentive and penalty programs, and in provider retention and termination decisions. The insurer, employer, or entity that provides physician network services shall provide a copy of the filing to an individual physician, provider, medical group, or individual practice association.

(b) The administrative director shall make each approved medical provider network economic profiling policy filing available to the public upon request. The administrative director may not publicly disclose any information submitted pursuant to this section that is determined by the administrative director to be confidential pursuant to state or federal law.

(c) For the purposes of this article, "economic profiling" shall mean any evaluation of a particular physician, provider, medical group, or individual practice association based in whole or in part on the economic costs or utilization of services associated with medical care provided or authorized by the physician, provider, medical group, or individual practice association.

(Amended by Stats. 2012, Ch. 363, Sec. 48. Effective January 1, 2013.)

4616.2. (a) A medical provider network shall file a written continuity of care policy with the administrative director.

(b) If approved by the administrative director, the provisions of the written continuity of care policy shall replace all prior continuity of care policies. A medical provider network shall file a revision of the continuity of care policy with the administrative director if it makes a material change to the policy.

(c) The medical provider network shall provide all employees entering the workers' compensation system notice of the medical provider network's written continuity of care policy and information regarding the process for an employee to request a review under the policy and, upon request, a copy of the medical provider network's written continuity of care policy.

(d) (1) At the request of an injured employee, completion of treatment shall be provided by a terminated provider as set forth in this section.

(2) The completion of treatment shall be provided by a terminated provider to an injured employee who, at the time of the contract's termination, was receiving services from that provider for one of the conditions described in paragraph (3).

(3) The employer or its claims administrator shall provide for the completion of treatment for the following conditions subject to coverage through the workers' compensation system:

(A) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt

medical attention and that has a limited duration. Completion of treatment shall be provided for the duration of the acute condition.

(B) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of treatment shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the employer or its claims administrator in consultation with the injured employee and the terminated provider and consistent with good professional practice. Completion of treatment under this paragraph shall not exceed 12 months from the contract termination date.

(C) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of treatment shall be provided for the duration of a terminal illness.

(D) Performance of a surgery or other procedure that is authorized by the employer or its claims administrator as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days of the contract's termination date.

(4) (A) The employer or its claims administrator may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the employer or its claims administrator is not required to continue the provider's services beyond the contract termination date.

(B) Unless otherwise agreed by the terminated provider and the employer or its claims administrator, the services rendered pursuant to this section shall be compensated at rates and methods of payment similar to those used by the medical provider network for currently contracting providers providing similar services who are practicing in the same or a similar geographic area as the terminated provider. The employer or its claims administrator is not required to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this paragraph.

(5) An employer or its claims administrator shall ensure that the requirements of this section are met.

(6) This section shall not require an employer or its claims administrator to provide for completion of treatment by a provider whose contract with the medical provider network has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

(7) Nothing in this section shall preclude an employer or its claims administrator from providing continuity of care beyond the requirements of this section.

(Amended by Stats. 2015, Ch. 542, Sec. 2. Effective January 1, 2016.)

4616.3. (a) If the injured employee notifies the employer of the injury or files a claim for workers' compensation with the employer, the employer shall arrange an initial medical evaluation and begin treatment as required by Section 4600.

(b) The employer shall notify the employee of the existence of the medical provider network established pursuant to this article, the employee's right to change treating physicians within the network after the first visit, and the method by which the list of participating providers may be accessed by the employee. The employer's failure to provide notice as required by this subdivision or failure to post the notice as required by Section 3550 shall not be a basis for the employee to treat outside the network unless it is shown that the failure to provide notice resulted in a denial of medical care.

(c) If an injured employee disputes either the diagnosis or the treatment prescribed by the treating physician, the employee may seek the opinion of another physician in the medical provider network. If the injured employee disputes the diagnosis or treatment prescribed by the second physician, the employee may seek the opinion of a third physician in the medical provider network.

(d) (1) Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's specialty or recognized expertise in treating the particular injury or condition in question.

(2) Treatment by a specialist who is not a member of the medical provider network may be permitted on a case-by-case basis if the medical provider network does not contain a physician who can provide the approved treatment and the treatment is approved by the employer or the insurer.

(Amended by Stats. 2012, Ch. 363, Sec. 50. Effective January 1, 2013.)

4616.4. (a) (1) The administrative director shall contract with individual physicians, as described in paragraph (2), or an independent medical review organization to perform medical provider network (MPN) independent medical reviews pursuant to this section.

(2) Only a physician licensed pursuant to Chapter 5 (commencing with Section 2000) of the Business and Professions Code may be an MPN independent medical reviewer.

(3) The administrative director shall ensure that an MPN independent medical reviewer or those within the review organization shall do all of the following:

(A) Be appropriately credentialed and privileged.

(B) Ensure that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensure that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions consistent with the medical utilization schedule established pursuant to Section 5307.27.

(D) Ensure that confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensure the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensure adequate screening for conflicts of interest.

(4) A medical professional selected by the administrative director or the independent medical review organization to review medical treatment decisions shall be a physician, as specified in paragraph (2) of subdivision (a), who meets the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the employee's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other law, the medical professional shall hold a nonrestricted license in any state of the United States, and for a physician, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions taken or pending by any hospital, government, or regulatory body.

(b) If, after the third physician's opinion, the treatment or diagnostic service remains disputed, the injured employee may request an MPN independent medical review regarding the disputed treatment or diagnostic service still in dispute after the third physician's opinion in accordance with Section 4616.3. The standard to be utilized for an MPN independent medical review is identical to that contained in the medical treatment utilization schedule established in Section 5307.27.

(c) An application for an MPN independent medical review shall be submitted to the administrative director on a one-page form provided by the administrative director entitled "MPN Independent Medical Review Application." The form shall contain a signed release from the injured employee, or a person authorized pursuant to law to act on behalf of the injured employee, authorizing the release of medical and treatment information. The injured employee may provide any relevant material or documentation with the application. The administrative director or the independent medical review organization shall assign the MPN independent medical reviewer.

(d) Following receipt of the application for an MPN independent medical review, the employer or insurer shall provide the MPN independent medical reviewer, assigned pursuant to subdivision (c), with all information that was considered in relation to the disputed treatment or diagnostic service, including both of the following:

(1) A copy of all correspondence from, and received by, any treating physician who provided a treatment or diagnostic service to the injured employee in connection with the injury.

(2) A complete and legible copy of all medical records and other information used by the physicians in making a decision regarding the disputed treatment or diagnostic service.

(e) Upon receipt of information and documents related to the application for an MPN independent medical review, the MPN independent medical reviewer shall conduct a physical examination of the injured employee at the employee's discretion. The MPN independent medical reviewer may order any diagnostic tests necessary to make his or her determination regarding medical treatment. Utilizing the medical treatment utilization schedule established pursuant to Section 5307.27, and taking into account any reports and information provided, the MPN independent medical reviewer shall determine whether the disputed health care service was consistent with Section 5307.27 based on the specific medical needs of the injured employee.

(f) The MPN independent medical reviewer shall issue a report to the administrative director, in writing, and in layperson's terms to the maximum extent practicable, containing his or her analysis and determination whether the disputed health care service was consistent with the medical treatment utilization schedule established pursuant to Section 5307.27, within 30 days of the examination of the injured employee, or within less time as prescribed by the administrative director. If the disputed health care service has not been provided and the MPN independent medical reviewer certifies in writing that an imminent and serious threat to the health of the injured employee may exist, including, but not limited to, serious pain, the potential loss of life, limb, or major bodily function, or the immediate and serious deterioration of the injured employee, the report shall be expedited and rendered within three days of the examination by the MPN independent medical reviewer. Subject to the approval of the administrative director, the deadlines for analyses and determinations involving both regular and expedited reviews may be extended by the administrative director for up to three days in extraordinary circumstances or for good cause.

(g) The MPN independent medical reviewer's analysis shall cite the injured employee's medical condition, the relevant documents in the record, and the relevant findings associated with the documents or any other information submitted to the MPN independent medical reviewer in order to support the determination.

(h) The administrative director shall immediately adopt the determination of the MPN independent medical reviewer, and shall promptly issue a written decision to the parties.

(i) If the determination of the MPN independent medical reviewer finds that the disputed treatment or diagnostic service is consistent with Section 5307.27, the injured employee may seek the disputed treatment or diagnostic service from a physician of his or her choice from within or outside the medical provider network. Treatment outside the medical provider network shall be provided consistent with Section 5307.27. The employer shall be liable for the cost of any approved medical treatment in accordance with Section 5307.1 or 5307.11.

(Amended by Stats. 2016, Ch. 84, Sec. 1. Effective January 1, 2017.)

4616.5. (a) For purposes of this article, "employer" means a self-insured employer, joint powers authority, or the state.

(b) For purposes of this article, "entity that provides physician network services" means a medical network licensed by the Department of Insurance or Department of Managed Health Care, or a third-party claims adjusting organization licensed by the Department of Insurance or certified by the Office of Self Insurance Plans, or a legal entity that offers medical management and physician network services within California.

(Amended by Stats. 2015, Ch. 542, Sec. 4. Effective January 1, 2016.)

4616.6. No additional examinations shall be ordered by the appeals board and no other reports shall be admissable to resolve any controversy arising out of this article.

(Added by Stats. 2004, Ch. 34, Sec. 27. Effective April 19, 2004.)

4616.7. (a) A health care organization certified pursuant to Section 4600.5 shall be deemed approved pursuant to this article if the requirements of this article are met, as determined by the administrative director.

(b) A health care service plan, licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, shall be deemed approved for purposes of this article if it has a reasonable number of physicians with competency in occupational medicine, as determined by the administrative director.

(c) A group disability insurance policy, as defined in subdivision (b) of Section 106 of the Insurance Code, that covers hospital, surgical, and medical care expenses shall be deemed approved for purposes of this article if it has a reasonable number of physicians with competency in occupational medicine, as determined by the administrative director. For the purposes of this section, a group disability insurance policy shall not include Medicare supplement, vision-only, dental-only, and Champus-supplement insurance. For purposes of this section, a group

disability insurance policy shall not include hospital indemnity, accident-only, and specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(d) Any Taft-Hartley health and welfare fund shall be deemed approved for purposes of this article if it has a reasonable number of physicians with competency in occupational medicine, as determined by the administrative director.

(Amended by Stats. 2012, Ch. 363, Sec. 51. Effective January 1, 2013.)

Article 2.5. Medical-Legal Expenses

(Article 2.5 added by Stats. 1984, Ch. 596, Sec. 4.)

4620. (a) For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party, the administrative director, or the board, which expenses may include X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and, as needed, interpreter's fees by a certified interpreter pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code, for the purpose of proving or disproving a contested claim.

(b) A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists:

(1) The employer rejects liability for a claimed benefit.

(2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim.

(3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity.

(c) Costs of medical evaluations, diagnostic tests, and interpreters incidental to the production of a medical report do not constitute medical-legal expenses unless the medical report is capable of proving or disproving a disputed medical fact, the determination of which is essential to an adjudication of the employee's claim for benefits. In determining whether a report meets the requirements of this subdivision, a judge shall give full consideration to the substance as well as the form of the report, as required by applicable statutes and regulations.

(d) If the injured employee cannot effectively communicate with an examining physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during the medical examination. Upon request of the injured employee, the employer or insurance carrier shall pay the costs of the interpreter services, as set forth in the fee schedule adopted by the administrative director pursuant to Section 5811. An employer shall not be required to pay for the services of an interpreter who is provisionally certified unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code.

(Amended by Stats. 2012, Ch. 363, Sec. 52. Effective January 1, 2013.)

4621. (a) In accordance with the rules of practice and procedure of the appeals board, the employee, or the dependents of a deceased employee, shall be reimbursed for his or her medical-legal expenses and reasonably, actually, and necessarily incurred, except as provided in Section 4064. The reasonableness of, and necessity for, incurring these expenses shall be determined with respect to the time when the expenses were actually incurred. Costs for medical evaluations, diagnostic tests, and interpreters' services incidental to the production of a medical report shall not be incurred earlier than the date of receipt by the employer, the employer's insurance carrier, or, if represented, the attorney of record, of all reports and documents required by the administrative director incidental to the services. This subdivision is not applicable unless there has been compliance with Section 4620.

(b) Except as provided in subdivision (c) and Sections 4061 and 4062, no comprehensive medical-legal evaluations, except those at the request of an employer, shall be performed during the first 60 days after the notice of claim has been filed pursuant to Section 5401, and neither the employer nor the employee shall be liable for any expenses incurred for comprehensive medical-legal evaluations performed within the first 60 days after the notice of claim has been filed pursuant to Section 5401.

(c) Comprehensive medical-legal evaluations may be performed at any time after the claim form has been filed pursuant to Section 5401 if the employer has rejected the claim.

(d) Where, at the request of the employer, the employer's insurance carrier, the administrative director, the appeals board, or a referee, the employee submits to examination by a physician, he or she shall be entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination to the same extent and manner as provided for in Section 4600.

(Amended by Stats. 1993, Ch. 121, Sec. 43. Effective July 16, 1993.)

4622. All medical-legal expenses for which the employer is liable shall, upon receipt by the employer of all reports and documents required by the administrative director incident to the services, be paid to whom the funds and expenses are due, as follows:

(a) (1) Except as provided in subdivision (b), within 60 days after receipt by the employer of each separate, written billing and report, and if payment is not made within this period, that portion of the billed sum then unreasonably unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill and report by the employer. If the employer, within the 60-day period, contests the reasonableness and necessity for incurring the fees, services, and expenses using the explanation of review required by Section 4603.3, payment shall be made within 20 days of the service of an order of the appeals board or the administrative director pursuant to Section 4603.6 directing payment.

(2) The penalty provided for in paragraph (1) shall not apply if both of the following occur:

(A) The employer pays the provider that portion of his or her charges that do not exceed the amount deemed reasonable pursuant to subdivision (e) within 60 days of receipt of the report and itemized billing.

(B) The employer prevails.

(b) (1) If the provider contests the amount paid, the provider may request a second review within 90 days of the service of the explanation of review. The request for a second review shall be submitted to the employer on a form prescribed by the administrative director and shall include all of the following:

(A) The date of the explanation of review and the claim number or other unique identifying number provided on the explanation of review.

(B) The party or parties requesting the service.

(C) Any item and amount in dispute.

(D) The additional payment requested and the reason therefor.

(E) Any additional information requested in the original explanation of review and any other information provided in support of the additional payment requested.

(2) If the provider does not request a second review within 90 days, the bill will be deemed satisfied and neither the employer nor the employee shall be liable for any further payment.

(3) Within 14 days of the request for second review, the employer shall respond with a final written determination on each of the items or amounts in dispute, including whether additional payment will be made.

(4) If the provider contests the amount paid, after receipt of the second review, the provider shall request an independent bill review as provided for in Section 4603.6.

(c) If the employer denies all or a portion of the amount billed for any reason other than the amount to be paid pursuant to the fee schedules in effect on the date of service, the provider may object to the denial within 90 days of the service of the explanation of review. If the provider does not object to the denial within 90 days, neither the employer nor the employee shall be liable for the amount that was denied. If the provider objects to the denial within 90 days of the service of the explanation of review, the employer shall file a petition and a declaration of readiness to proceed with the appeals board within 60 days of service of the objection. If the employer prevails before the appeals board, the appeals board shall order the physician to reimburse the employer for the amount of the paid charges found to be unreasonable.

(d) If requested by the employee, or the dependents of a deceased employee, within 20 days from the filing of an order of the appeals board directing payment, and where payment is not made within that period, that portion of the billed sum then unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of the filing of the order of the board directing payment.

(e) (1) Using the explanation of review as described in Section 4603.3, the employer shall notify the provider of the services, the employee, or if represented, his or her attorney, if the employer contests the reasonableness or necessity of incurring these expenses, and shall indicate the reasons therefor.

(2) The appeals board shall promulgate all necessary and reasonable rules and regulations to insure compliance with this section, and shall take such further steps as may be necessary to guarantee that the rules and regulations are enforced.

(3) The provisions of Sections 5800 and 5814 shall not apply to this section.

(f) Nothing contained in this section shall be construed to create a rebuttable presumption of entitlement to payment of an expense upon receipt by the employer of the required reports and documents. This section is not applicable unless there has been compliance with Sections 4620 and 4621.

(Amended by Stats. 2012, Ch. 363, Sec. 53. Effective January 1, 2013.)

4625. (a) Effective for services provided on or after January 1, 2017, all bills for medical-legal evaluation or medical-legal expense shall be submitted to the employer within 12 months of the date of service in the manner prescribed by the administrative director. The administrative director shall adopt rules to define circumstances that constitute good cause for an exception to the 12-month period. Bills for medical-legal charges are barred unless timely submitted.

(b) Notwithstanding subdivision (d) of Section 4628, all charges for medical-legal expenses for which the employer is liable that are not in excess of those set forth in the official medical-legal fee schedule adopted pursuant to Section 5307.6 shall be paid promptly pursuant to Section 4622.

(c) If the employer contests the reasonableness of the charges it has paid, the employer may file a petition with the appeals board to obtain reimbursement of the charges from the physician that are considered to be unreasonable.

(Amended by Stats. 2016, Ch. 214, Sec. 3. Effective January 1, 2017.)

4626. All charges for X-rays, laboratory services, and other diagnostic tests provided in connection with an industrial medical-legal evaluation shall be billed in accordance with the official medical fee schedule adopted by the administrative director pursuant to Section 5307.1 and shall be itemized separately in accordance with rules promulgated by the administrative director.

(Added by Stats. 1984, Ch. 596, Sec. 4. Effective July 19, 1984.)

4627. The board and the administrative director may promulgate such reasonable rules and regulations as may be necessary to interpret this article and compel compliance with its provisions.

(Added by Stats. 1984, Ch. 596, Sec. 4. Effective July 19, 1984.)

4628. (a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

(1) Taking a complete history.

(2) Reviewing and summarizing prior medical records.

(3) Composing and drafting the conclusions of the report.

(b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board. All civil

penalties collected under this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

(g) A physician who is assessed a civil penalty under this section may be terminated, suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (l) of Section 139.2.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

(i) Any person billing for medical-legal evaluations, diagnostic procedures, or diagnostic services performed by persons other than those employed by the reporting physician or physicians, or a medical corporation owned by the reporting physician or physicians shall specify the amount paid or to be paid to those persons for the evaluations, procedures, or services. This subdivision shall not apply to any procedure or service defined or valued pursuant to Section 5307.1.

(j) The report shall contain a declaration by the physician signing the report, under penalty of perjury, stating:

"I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true."

The foregoing declaration shall be dated and signed by the reporting physician and shall indicate the county wherein it was signed.

(k) The physician shall provide a curriculum vitae upon request by a party and include a statement concerning the percent of the physician's total practice time that is annually devoted to medical treatment.

(Amended by Stats. 2003, Ch. 639, Sec. 29. Effective January 1, 2004.)

Article 3. Disability Payments

(Article 3 enacted by Stats. 1937, Ch. 90.)

4650. (a) If an injury causes temporary disability, the first payment of temporary disability indemnity shall be made not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid, unless liability for the injury is earlier denied.

(b) (1) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity, except as provided in paragraph (2). When the last payment of temporary disability indemnity has been made pursuant to subdivision (c) of Section 4656, and regardless of whether the extent of permanent disability can be determined at that date, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined, until that amount has been paid.

(2) Prior to an award of permanent disability indemnity, a permanent disability indemnity payment shall not be required if the employer has offered the employee a position that pays at least 85 percent of the wages and compensation paid to the employee at the time of injury or if the employee is employed in a position that pays at least 100 percent of the wages and compensation paid to the employee at the time of injury, provided that when an award of permanent disability indemnity is made, the amount then due shall be calculated from the last date for which temporary disability indemnity was paid, or the date the employee's disability became permanent and stationary, whichever is earlier.

(c) Payment of temporary or permanent disability indemnity subsequent to the first payment shall be made as due every two weeks on the day designated with the first payment.

(d) If any indemnity payment is not made timely as required by this section, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee, unless the employer continues the employee's wages under a salary continuation plan, as defined in subdivision (g). No increase shall apply to any payment due prior to or within 14 days after the date the claim form was submitted to the employer under Section 5401. No increase shall apply when, within the 14-day period specified under subdivision (a), the employer is unable to determine whether temporary disability indemnity payments are owed and advises the employee, in the manner prescribed in rules and regulations adopted pursuant to Section 138.4, why payments cannot be made within the 14-day period, what additional information is required to make the decision whether temporary disability indemnity payments are owed, and when the employer expects to have the information required to make the decision.

(e) If the employer is insured for its obligation to provide compensation, the employer shall be obligated to reimburse the insurer for the amount of increase in indemnity payments, made pursuant to subdivision (d), if the late payment which gives rise to the increase in indemnity payments, is due less than seven days after the insurer receives the completed claim form from the employer. Except as specified in this subdivision, an employer shall not be obligated to reimburse an insurer nor shall an insurer be permitted to seek reimbursement, directly or indirectly, for the amount of increase in indemnity payments specified in this section.

(f) If an employer is obligated under subdivision (e) to reimburse the insurer for the amount of increase in indemnity payments, the insurer shall notify the employer in writing, within 30 days of the payment, that the employer is obligated to reimburse the insurer and shall bill and collect the amount of the payment no later than at final audit. However, the insurer shall not be obligated to collect, and the employer shall not be obligated to reimburse, amounts paid pursuant to subdivision (d) unless the aggregate total paid in a policy year exceeds one hundred dollars ($100). The employer shall have 60 days, following notice of the obligation to reimburse, to appeal the decision of the insurer to the Department of Insurance. The notice of the obligation to reimburse shall specify that the employer has the right to appeal the decision of the insurer as provided in this subdivision.

(g) For purposes of this section, "salary continuation plan" means a plan that meets both of the following requirements:

(1) The plan is paid for by the employer pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy.

(2) The plan provides the employee on his or her regular payday with salary not less than the employee is entitled to receive pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy and not less than the employee would otherwise receive in indemnity payments.

(Amended by Stats. 2012, Ch. 363, Sec. 54. Effective January 1, 2013.)

4650.5. Notwithstanding Section 4650, in the case of state civil service employees, employees of the Regents of the University

of California, and employees of the Board of Trustees of the California State University, the disability payment shall be made from the first day the injured employee leaves work as a result of the injury, if the injury is the result of a criminal act of violence against the employee.

(Amended by Stats. 1983, Ch. 142, Sec. 102.)

4651. (a) No disability indemnity payment shall be made by any written instrument unless it is immediately negotiable and payable in cash, on demand, without discount at some established place of business in the state.

Nothing in this section shall prohibit an employer from depositing the disability indemnity payment in an account in any bank, savings and loan association or credit union of the employee's choice in this state, provided the employee has voluntarily authorized the deposit, nor shall it prohibit an employer from electronically depositing the disability indemnity payment in an account in any bank, savings and loan association, or credit union, that the employee has previously authorized to receive electronic deposits of payroll, unless the employee has requested, in writing, that disability indemnity benefits not be electronically deposited in the account.

(b) It is not a violation of this section if a delay in the negotiation of a written instrument is caused solely by the application of state or federal banking laws or regulations.

(c) On or before July 1, 2004, the administrative director shall present to the Governor recommendations on how to provide better access to funds paid to injured workers in light of the requirements of federal and state laws and regulations governing the negotiability of disability indemnity payments. The administrative director shall make specific recommendations regarding payments to migratory and seasonal farmworkers. The Commission on Health and Safety and Workers' Compensation and the Employment Development Department shall assist the administrative director in the completion of this report.

(Amended by Stats. 2002, Ch. 6, Sec. 65. Effective January 1, 2003.)

4651.1. Where a petition is filed with the appeals board concerning a continuing award of such appeals board, in which it is alleged that the disability has decreased or terminated, there shall be a rebuttable presumption that such temporary disability continues for at least one week following the filing of such petition. In such case, payment for such week shall be made in accordance with the provisions of Sections 4650 and 4651 of this code.

Where the employee has returned to work at or prior to the date of such filing, however, no such presumption shall apply.

Service of a copy of such petition on the employee shall be made as provided by Section 5316 of this code.

(Amended by Stats. 1965, Ch. 1513.)

4651.2. No petitions filed under Section 4651.1 shall be granted while the injured workman is pursuing a rehabilitation plan under Section 139.5 of this code.

(Added by Stats. 1965, Ch. 1513.)

4651.3. Where a petition is filed with the appeals board pursuant to the provisions of Section 4651.1, and is subsequently denied wholly by the appeals board, the board may determine the amount of attorney's fees reasonably incurred by the applicant in resisting the petition and may assess such reasonable attorney's fees as a cost upon the party filing the petition to decrease or terminate the award of the appeals board.

(Added by Stats. 1971, Ch. 1558.)

4652. Except as otherwise provided by Section 4650.5, no temporary disability indemnity is recoverable for the disability suffered during the first three days after the employee leaves work as a result of the injury unless temporary disability continues for more than 14 days or the employee is hospitalized as an inpatient for treatment required by the injury, in either of which cases temporary disability indemnity shall be payable from the date of disability. For purposes of calculating the waiting period, the day of the injury shall be included unless the employee was paid full wages for that day.

(Amended by Stats. 1989, Ch. 892, Sec. 36.)

4653. If the injury causes temporary total disability, the disability payment is two-thirds of the average weekly earnings during the period of such disability, consideration being given to the ability of the injured employee to compete in an open labor market.

(Amended by Stats. 1973, Ch. 1023.)

4654. If the injury causes temporary partial disability, the disability payment is two-thirds of the weekly loss in wages during the period of such disability. However, such disability payment shall be reduced by the sum of unemployment compensation benefits and extended duration benefits received by the employee during the period of temporary partial disability.

(Amended by Stats. 1973, Ch. 1023.)

4655. If the injury causes temporary disability which is at times total and at times partial, the weekly disability payment during the period of each total or partial disability is in accordance with sections 4653 and 4654 respectively.

(Enacted by Stats. 1937, Ch. 90.)

4656. (a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(b) Aggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to April 19, 2004, causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(c) (1) Aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.

(2) Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.

(3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

(A) Acute and chronic hepatitis B.
(B) Acute and chronic hepatitis C.
(C) Amputations.
(D) Severe burns.
(E) Human immunodeficiency virus (HIV).
(F) High-velocity eye injuries.
(G) Chemical burns to the eyes.
(H) Pulmonary fibrosis.
(I) Chronic lung disease.

(Amended by Stats. 2007, Ch. 595, Sec. 1. Effective January 1, 2008.)

4657. In case of temporary partial disability the weekly loss in wages shall consist of the difference between the average weekly earnings of the injured employee and the weekly amount which the injured employee will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings, due regard shall be given to the ability of the injured employee to compete in an open labor market. If evidence of exact loss of earnings is lacking, such weekly loss in wages may be computed from the proportionate loss of physical ability or earning power caused by the injury.

(Enacted by Stats. 1937, Ch. 90.)

4658. (a) For injuries occurring prior to January 1, 1992, if the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	3
10–19.75	4
20–29.75	5
30–49.75	6
50–69.75	7
70–99.75	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1— Percentage of permanent disability incurred:	Column 2— Cumulative number of benefit weeks:
5	15.00
10	30.25
15	50.25
20	70.50
25	95.50
30	120.75
35	150.75
40	180.75
45	210.75
50	241.00
55	276.00
60	311.00
65	346.00
70	381.25
75	421.25
80	461.25
85	501.25
90	541.25
95	581.25
100	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(b) This subdivision shall apply to injuries occurring on or after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	3
10–19.75	4
20–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents ($78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10	4
10–19.75	5

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
20–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after January 1, 2005, and as additionally provided in paragraph (4). If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75	3
10–14.75	4
15–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	16

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(3) (A) If, within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, and regardless of whether the injured employee accepts or rejects the offer, each disability payment remaining to be paid to the injured employee from the date the offer was made shall be paid in accordance with paragraph (1) and decreased by 15 percent.

(B) If the regular work, modified work, or alternative work is terminated by the employer before the end of the period for which disability payments are due the injured employee, the amount of each of the remaining disability payments shall be paid in accordance with paragraph (1) and increased by 15 percent. An employee who voluntarily terminates employment shall not be eligible for payment under this subparagraph. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(4) For compensable claims arising before April 30, 2004, the schedule provided in this subdivision shall not apply to the determination of permanent disabilities when there has been either a comprehensive medical-legal report or a report by a treating physician, indicating the existence of permanent disability, or when the employer is required to provide the notice required by Section 4061 to the injured worker.

(e) This subdivision shall apply to injuries occurring on or after January 1, 2013. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75	3
10–14.75	4
15–24.75	5
25–29.75	6
30–49.75	7
50–69.75	8
70–99.75	16

(1) The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) If the permanent disability directly caused by the industrial injury is total, payment shall be made as provided in Section 4659.

(Amended by Stats. 2012, Ch. 363, Sec. 55. Effective January 1, 2013.)

4658.1. As used in this article, the following definitions apply:

(a) "Regular work" means the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(b) "Modified work" means regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(c) "Alternative work" means work that the employee has the ability to perform, that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of

injury, and that is located within reasonable commuting distance of the employee's residence at the time of injury.

(d) For the purpose of determining whether wages and compensation are equivalent to those paid at the time of injury, the wages and compensation for any increase in working hours over the average hours worked at the time of injury shall not be considered.

(e) For the purpose of determining whether wages and compensation are equivalent to those paid at the time of injury, actual wages and compensation shall be determined without regard to the minimums and maximums set forth in Chapter 1 (commencing with Section 4451).

(f) The condition that regular work, modified work, or alternative work be located within a reasonable distance of the employee's residence at the time of injury may be waived by the employee. The condition shall be deemed to be waived if the employee accepts the regular work, modified work, or alternative work and does not object to the location within 20 days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(Added by Stats. 2004, Ch. 34, Sec. 31. Effective April 19, 2004.)

4658.5. (a) This section shall apply to injuries occurring on or after January 1, 2004, and before January 1, 2013.

(b) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at state-approved or accredited schools, as follows:

(1) Up to four thousand dollars ($4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars ($6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars ($8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars ($10,000) for permanent partial disability awards between 50 and 99 percent.

(c) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return-to-work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and other matters necessary to the proper administration of the supplemental job displacement benefit.

(d) A voucher issued on or after January 1, 2013, shall expire two years after the date the voucher is furnished to the employee or five years after the date of injury, whichever is later. The employee shall not be entitled to payment or reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the employer prior to the expiration date.

(e) An employer shall not be liable for compensation for injuries incurred by the employee while utilizing the voucher.

(Amended by Stats. 2012, Ch. 363, Sec. 56. Effective January 1, 2013.)

4658.6. The employer shall not be liable for the supplemental job displacement benefit pursuant to Section 4658.5 if the employer meets either of the following conditions:

(a) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

(b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:

(1) The employee has the ability to perform the essential functions of the job provided.

(2) The job provided is in a regular position lasting at least 12 months.

(3) The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury.

(4) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

(Amended by Stats. 2012, Ch. 363, Sec. 57. Effective January 1, 2013.)

4658.7. (a) This section shall apply to injuries occurring on or after January 1, 2013.

(b) If the injury causes permanent partial disability, the injured employee shall be entitled to a supplemental job displacement benefit as provided in this section unless the employer makes an offer of regular, modified, or alternative work, as defined in Section 4658.1, that meets both of the following criteria:

(1) The offer is made no later than 60 days after receipt by the claims administrator of the first report received from either the primary treating physician, an agreed medical evaluator, or a qualified medical evaluator, in the form created by the administrative director pursuant to subdivision (h), finding that the disability from all conditions for which compensation is claimed has become permanent and stationary and that the injury has caused permanent partial disability.

(A) If the employer or claims administrator has provided the physician with a job description of the employee's regular work, proposed modified work, or proposed alternative work, the physician shall evaluate and describe in the form whether the work capacities and activity restrictions are compatible with the physical requirements set forth in that job description.

(B) The claims administrator shall forward the form to the employer for the purpose of fully informing the employer of work capacities and activity restrictions resulting from the injury that are relevant to potential regular, modified, or alternative work.

(2) The offer is for regular work, modified work, or alternative work lasting at least 12 months.

(c) The supplemental job displacement benefit shall be offered to the employee within 20 days after the expiration of the time for making an offer of regular, modified, or alternative work pursuant to paragraph (1) of subdivision (b).

(d) The supplemental job displacement benefit shall be in the form of a voucher redeemable as provided in this section up to an aggregate of six thousand dollars ($6,000).

(e) The voucher may be applied to any of the following expenses at the choice of the injured employee:

(1) Payment for education-related retraining or skill enhancement, or both, at a California public school or with a provider that is certified and on the state's Eligible Training

Provider List (EPTL), as authorized by the federal Workforce Investment Act (P.L. 105-220), including payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement.

(2) Payment for occupational licensing or professional certification fees, related examination fees, and examination preparation course fees.

(3) Payment for the services of licensed placement agencies, vocational or return-to-work counseling, and résumé preparation, all up to a combined limit of 10 percent of the amount of the voucher.

(4) Purchase of tools required by a training or educational program in which the employee is enrolled.

(5) Purchase of computer equipment, up to one thousand dollars ($1,000).

(6) Up to five hundred dollars ($500) as a miscellaneous expense reimbursement or advance, payable upon request and without need for itemized documentation or accounting. The employee shall not be entitled to any other voucher payment for transportation, travel expenses, telephone or Internet access, clothing or uniforms, or incidental expenses.

(f) The voucher shall expire two years after the date the voucher is furnished to the employee, or five years after the date of injury, whichever is later. The employee shall not be entitled to payment or reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the employer prior to the expiration date.

(g) Settlement or commutation of a claim for the supplemental job displacement benefit shall not be permitted under Chapter 2 (commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3.

(h) The administrative director shall adopt regulations for the administration of this section, including, but not limited to, both of the following:

(1) The time, manner, and content of notices of rights under this section.

(2) The form of a mandatory attachment to a medical report to be forwarded to the employer pursuant to paragraph (1) of subdivision (b) for the purpose of fully informing the employer of work capacities and of activity restrictions resulting from the injury that are relevant to potential regular work, modified work, or alternative work.

(i) An employer shall not be liable for compensation for injuries incurred by the employee while utilizing the voucher.

(Added by Stats. 2012, Ch. 363, Sec. 58. Effective January 1, 2013.)

4659. (a) If the permanent disability is at least 70 percent, but less than 100 percent, 1.5 percent of the average weekly earnings for each 1 percent of disability in excess of 60 percent is to be paid during the remainder of life, after payment for the maximum number of weeks specified in Section 4658 has been made. For the purposes of this subdivision only, average weekly earnings shall be taken at not more than one hundred seven dollars and sixty-nine cents ($107.69). For injuries occurring on or after July 1, 1994, average weekly wages shall not be taken at more than one hundred fifty-seven dollars and sixty-nine cents ($157.69). For injuries occurring on or after July 1, 1995, average weekly wages shall not be taken at more than two hundred seven dollars and sixty-nine cents ($207.69). For injuries occurring on or after July 1, 1996, average weekly wages shall not be taken at more than two hundred fifty-seven dollars and sixty-nine cents ($257.69). For injuries occurring on or after January 1, 2006, average weekly wages shall not be taken at more than five hundred fifteen dollars and thirty-eight cents ($515.38).

(b) If the permanent disability is total, the indemnity based upon the average weekly earnings determined under Section 4453 shall be paid during the remainder of life.

(c) For injuries occurring on or after January 1, 2003, an employee who becomes entitled to receive a life pension or total permanent disability indemnity as set forth in subdivisions (a) and (b) shall have that payment increased annually commencing on January 1, 2004, and each January 1 thereafter, by an amount equal to the percentage increase in the "state average weekly wage" as compared to the prior year. For purposes of this subdivision, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

(Amended by Stats. 2002, Ch. 6, Sec. 67. Effective January 1, 2003.)

4660. This section shall only apply to injuries occurring before January 1, 2013.

(a) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

(b) (1) For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).

(2) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

(c) The administrative director shall amend the schedule for the determination of the percentage of permanent disability in accordance with this section at least once every five years. This schedule shall be available for public inspection and, without formal introduction in evidence, shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule.

(d) The schedule shall promote consistency, uniformity, and objectivity. The schedule and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule, amendment or revision, as the fact may be. For compensable claims arising before January 1, 2005, the schedule as revised pursuant to changes made in legislation enacted during the 2003–04 Regular and Extraordinary Sessions shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

(e) On or before January 1, 2005, the administrative director shall adopt regulations to implement the changes made to this section by the act that added this subdivision.

(Amended by Stats. 2012, Ch. 363, Sec. 59. Effective January 1, 2013.)

4660.1. This section shall apply to injuries occurring on or after January 1, 2013.

(a) In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of injury.

(b) For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee's whole person impairment, as provided in the Guides, multiplied by an adjustment factor of 1.4.

(c) (1) Except as provided in paragraph (2), there shall be no increases in impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury. Nothing in this section shall limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.

(2) An increased impairment rating for psychiatric disorder shall not be subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:

(A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.

(B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.

(d) The administrative director may formulate a schedule of age and occupational modifiers and may amend the schedule for the determination of the age and occupational modifiers in accordance with this section. The Schedule for Rating Permanent Disabilities pursuant to the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) and the schedule of age and occupational modifiers shall be available for public inspection and, without formal introduction in evidence, shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule. Until the schedule of age and occupational modifiers is amended, for injuries occurring on or after January 1, 2013, permanent disabilities shall be rated using the age and occupational modifiers in the permanent disability rating schedule adopted as of January 1, 2005.

(e) The schedule of age and occupational modifiers shall promote consistency, uniformity, and objectivity.

(f) The schedule of age and occupational modifiers and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule, amendment, or revision, as the case may be.

(g) Nothing in this section shall preclude a finding of permanent total disability in accordance with Section 4662.

(h) In enacting the act adding this section, it is not the intent of the Legislature to overrule the holding in Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman) (2010) 187 Cal.App.4th 808.

(i) The Commission on Health and Safety and Workers' Compensation shall conduct a study to compare average loss of earnings for employees who sustained work-related injuries with permanent disability ratings under the schedule, and shall report the results of the study to the appropriate policy and fiscal committees of the Legislature no later than January 1, 2016.

(Added by Stats. 2012, Ch. 363, Sec. 60. Effective January 1, 2013.)

4661. Where an injury causes both temporary and permanent disability, the injured employee is entitled to compensation for any permanent disability sustained by him in addition to any payment received by such injured employee for temporary disability.

Every computation made pursuant to this section shall be made only with reference to disability resulting from an original injury sustained after this section as amended during the 1949 Regular Session of the Legislature becomes effective; provided, however, that all rights presently existing under this section shall be continued in force.

(Amended by Stats. 1949, Ch. 107.)

4661.5. Notwithstanding any other provision of this division, when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the temporary disability indemnity average weekly earnings amount specified in Section 4453 in effect on the date each temporary total disability payment is made unless computing the payment on this basis produces a lower payment because of a reduction in the minimum average weekly earnings applicable under Section 4453.

(Amended by Stats. 1989, Ch. 892, Sec. 38.)

4662. (a) Any of the following permanent disabilities shall be conclusively presumed to be total in character:

(1) Loss of both eyes or the sight thereof.

(2) Loss of both hands or the use thereof.

(3) An injury resulting in a practically total paralysis.

(4) An injury to the brain resulting in permanent mental incapacity.

(b) In all other cases, permanent total disability shall be determined in accordance with the fact.

(Amended by Stats. 2014, Ch. 144, Sec. 46. Effective January 1, 2015.)

4663. (a) Apportionment of permanent disability shall be based on causation.

(b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

(e) Subdivisions (a), (b), and (c) do not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2.

(Amended by Stats. 2016, Ch. 86, Sec. 218. Effective January 1, 2017.)

4664. (a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.

(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

(c) (1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:

(A) Hearing.

(B) Vision.

(C) Mental and behavioral disorders.

(D) The spine.

(E) The upper extremities, including the shoulders.

(F) The lower extremities, including the hip joints.

(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

(2) Nothing in this section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.

(Added by Stats. 2004, Ch. 34, Sec. 35. Effective April 19, 2004.)

Article 4. Death Benefits

(Article 4 enacted by Stats. 1937, Ch. 90.)

4700. The death of an injured employee does not affect the liability of the employer under Articles 2 (commencing with Section 4600) and 3 (commencing with Section 4650). Neither temporary nor permanent disability payments shall be made for any period of time subsequent to the death of the employee. Any accrued and unpaid compensation shall be paid to the dependents, or, if there are no dependents, to the personal representative of the deceased employee or heirs or other persons entitled thereto, without administration.

(Amended by Stats. 1983, Ch. 142, Sec. 103.)

4701. If an injury causes death, either with or without disability, the employer shall be liable, in addition to any other benefits provided by this division, for all of the following:

(a) Reasonable expenses of the employee's burial, in accordance with the following:

(1) Up to two thousand dollars ($2,000) for injuries occurring prior to January 1, 1991.

(2) Up to five thousand dollars ($5,000) for injuries occurring on or after January 1, 1991, and prior to January 1, 2013.

(3) Up to ten thousand dollars ($10,000) for injuries occurring on or after January 1, 2013.

(b) A death benefit, to be allowed to the dependents when the employee leaves any person dependent upon him or her for support.

(Amended by Stats. 2012, Ch. 363, Sec. 61. Effective January 1, 2013.)

4702. (a) Except as otherwise provided in this section and Sections 4553, 4554, 4557, and 4558, and notwithstanding any amount of compensation paid or otherwise owing to the surviving dependent, personal representative, heir, or other person entitled to a deceased employee's accrued and unpaid compensation, the death benefit in cases of total dependency shall be as follows:

(1) In the case of two total dependents and regardless of the number of partial dependents, for injuries occurring before January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after January 1, 1991, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1994, one hundred thirty-five thousand dollars ($135,000), for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars ($145,000), and for injuries occurring on or after January 1, 2006, two hundred ninety thousand dollars ($290,000).

(2) In the case of one total dependent and one or more partial dependents, for injuries occurring before January 1, 1991, seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars ($125,000), and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000), plus four times the amount annually devoted to the support of the partial dependents, but not more than the following: for injuries occurring before January 1, 1991, a total of ninety-five thousand dollars ($95,000), for injuries occurring on or after January 1, 1991, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1994, one hundred twenty-five thousand dollars ($125,000), for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars ($145,000), and for injuries occurring on or after January 1, 2006, two hundred ninety thousand dollars ($290,000).

(3) In the case of one total dependent and no partial dependents, for injuries occurring before January 1, 1991, seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars ($125,000), and for injuries occurring on or after January 1, 2006, two hundred fifty thousand dollars ($250,000).

(4) (A) In the case of no total dependents and one or more partial dependents, for injuries occurring before January 1, 1991, four times the amount annually devoted to the support of the partial dependents, but not more than seventy thousand dollars ($70,000), for injuries occurring on or after January 1, 1991, a total of ninety-five thousand dollars ($95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars ($115,000), and for injuries occurring on or after July 1, 1996, but before January 1, 2006, one hundred twenty-five thousand dollars ($125,000).

(B) In the case of no total dependents and one or more partial dependents, eight times the amount annually devoted to the support of the partial dependents, for injuries occurring on

or after January 1, 2006, but not more than two hundred fifty thousand dollars ($250,000).

(5) In the case of three or more total dependents and regardless of the number of partial dependents, one hundred fifty thousand dollars ($150,000), for injuries occurring on or after July 1, 1994, one hundred sixty thousand dollars ($160,000), for injuries occurring on or after July 1, 1996, and three hundred twenty thousand dollars ($320,000), for injuries occurring on or after January 1, 2006.

(6) (A) In the case of a police officer who has no total dependents and no partial dependents, for injuries occurring on or after January 1, 2003, and prior to January 1, 2004, two hundred fifty thousand dollars ($250,000) to the estate of the deceased police officer.

(B) For injuries occurring on or after January 1, 2004, in the case of no total dependents and no partial dependents, two hundred fifty thousand dollars ($250,000) to the estate of the deceased employee.

(b) A death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

(c) Disability indemnity shall not be deducted from the death benefit and shall be paid in addition to the death benefit when the injury resulting in death occurs after September 30, 1949.

(d) All rights under this section existing prior to January 1, 1990, shall be continued in force.

(Amended by Stats. 2006, Ch. 119, Sec. 2. Effective January 1, 2007.)

4703. Subject to the provisions of Section 4704, this section shall determine the right to a death benefit.

If there is any person wholly dependent for support upon a deceased employee, that person shall receive a full death benefit as set forth in Section 4702 for one total dependent, and any additional partial dependents shall receive a death benefit as set forth in subdivision (b) of Section 4702 to a maximum aggregate amount of twenty-five thousand dollars ($25,000).

If there are two or more persons wholly dependent for support upon a deceased employee, those persons shall receive the death benefit set forth in subdivision (a) of Section 4702, and any person partially dependent shall receive no part thereof.

If there is more than one person wholly dependent for support upon a deceased employee, the death benefit shall be divided equally among them.

If there is more than one person partially dependent for support upon a deceased employee, and no person wholly dependent for support, the amount allowed as a death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency.

(Amended by Stats. 1981, Ch. 210, Sec. 1.)

4703.5. (a) In the case of one or more totally dependent children, as defined in Section 3501, after payment of the amount specified in Section 4702, and notwithstanding the maximum limitations specified in Sections 4702 and 4703, payment of death benefits shall continue until the youngest child attains 18 years of age, or until the death of a child physically or mentally incapacitated from earning, in the same manner and amount as temporary total disability indemnity would have been paid to the employee, except that no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

(b) (1) Notwithstanding the age limitation in subdivision (a), the payment of death benefits shall continue until the youngest child attains 19 years of age if the child is still attending high school and is receiving the death benefits as a child of an active member of a sheriff's office, an active member of a police or fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision, an individual described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who is primarily engaged in active law enforcement activities, active firefighting member of the Department of Forestry and Fire Protection, or an active member of any county forestry or firefighting department or unit killed in the performance of duty.

(2) Paragraph (1) shall not apply with respect to a child of a person whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or active firefighting services, such as stenographers, telephone operators, and other office workers.

(Amended by Stats. 2013, Ch. 786, Sec. 2. Effective January 1, 2014.)

4703.6. The provisions of Section 4703.5 shall also apply to a totally dependent minor child of a local safety member as defined in Article 4 (commencing with Section 20420) of Chapter 4 of Part 3 of Division 5 of Title 2 of the Government Code, or a safety member as defined in Section 31469.3 of the Government Code, other than a member performing duties related to juvenile hall group counseling and group supervision, or a safety member subject to any public retirement system, or a patrol member as defined in Section 20390 of the Government Code, if that member was killed in the line of duty prior to January 1, 1990, and the totally dependent minor child is otherwise entitled to benefits under Section 4703.5.

(Amended by Stats. 2002, Ch. 296, Sec. 1. Effective August 28, 2002. Applicable from January 1, 2002, by Sec. 2 of Ch. 296.)

4704. The appeals board may set apart or reassign the death benefit to any one or more of the dependents in accordance with their respective needs and in a just and equitable manner, and may order payment to a dependent subsequent in right, or not otherwise entitled thereto, upon good cause being shown therefor. The death benefit shall be paid to such one or more of the dependents of the deceased or to a trustee appointed by the appeals board for the benefit of the person entitled thereto, as determined by the appeals board.

(Amended by Stats. 1965, Ch. 1513.)

4705. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply it in compliance with the findings and directions of the appeals board.

(Amended by Stats. 1965, Ch. 1513.)

4706. (a) If a dependent beneficiary of any deceased employee dies and there is no surviving dependent, the payments of the death benefit accrued and payable at the time of the death of the sole remaining dependent shall be paid upon the order of the appeals board to the heirs of the dependent or, if none, to the heirs of the deceased employee, without administration.

(b) In the event there is no surviving dependent and no surviving heir, the appeals board may order the burial expense of the deceased employee, not to exceed the amount specified in Section 4701, paid to the proper person, without administration.

(Amended by Stats. 1972, Ch. 1334.)

4706.5. (a) Whenever any fatal injury is suffered by an employee under circumstances that would entitle the employee to compensation benefits, but for his or her death, and the employee does not leave surviving any person entitled to a dependency

death benefit, the employer shall pay a sum to the Department of Industrial Relations equal to the total dependency death benefit that would be payable to a surviving spouse with no dependent minor children.

(b) When the deceased employee leaves no surviving dependent, personal representative, heir, or other person entitled to the accrued and unpaid compensation referred to in Section 4700, the accrued and unpaid compensation shall be paid by the employer to the Department of Industrial Relations.

(c) The payments to be made to the Department of Industrial Relations, as required by subdivisions (a) and (b), shall be deposited in the General Fund and shall be credited, as a reimbursement, to any appropriation to the Department of Industrial Relations for payment of the additional compensation for subsequent injury provided in Article 5 (commencing with Section 4751), in the fiscal year in which the Controller's receipt is issued.

(d) The payments to be made to the Department of Industrial Relations, as required by subdivision (a), shall be paid to the department in a lump sum in the manner provided in subdivision (b) of Section 5101.

(e) The Department of Industrial Relations shall keep a record of all payments due the state under this section, and shall take any steps as may be necessary to collect those amounts.

(f) Each employer, or the employer's insurance carrier, shall notify the administrative director, in any form as the administrative director may prescribe, of each employee death, except when the employer has actual knowledge or notice that the deceased employee left a surviving dependent.

(g) When, after a reasonable search, the employer concludes that the deceased employee left no one surviving who is entitled to a dependency death benefit, and concludes that the death was under circumstances that would entitle the employee to compensation benefits, the employer may voluntarily make the payment referred to in subdivision (a). Payments so made shall be construed as payments made pursuant to an appeals board findings and award. Thereafter, if the appeals board finds that the deceased employee did in fact leave a person surviving who is entitled to a dependency death benefit, upon that finding, all payments referred to in subdivision (a) that have been made shall be forthwith returned to the employer, or if insured, to the employer's workers' compensation carrier that indemnified the employer for the loss.

(h) This section does not apply where there is no surviving person entitled to a dependency death benefit or accrued and unpaid compensation if a death benefit is paid to any person under paragraph (6) of subdivision (a) of Section 4702.

(Amended by Stats. 2006, Ch. 119, Sec. 3. Effective January 1, 2007.)

4707. (a) Except as provided in subdivision (b), no benefits, except reasonable expenses of burial not exceeding one thousand dollars ($1,000), shall be awarded under this division on account of the death of an employee who is an active member of the Public Employees' Retirement System unless it is determined that a special death benefit, as defined in the Public Employees' Retirement Law, or the benefit provided in lieu of the special death benefit in Sections 21547 and 21548 of the Government Code, will not be paid by the Public Employees' Retirement System to the surviving spouse or children under 18 years of age, of the deceased, on account of the death, but if the total death allowance paid to the surviving spouse and children is less than the benefit otherwise payable under this division the surviving spouse and children are entitled, under this division, to the difference.

The amendments to this section during the 1977–78 Regular Session shall be applied retroactively to July 1, 1976.

(b) The limitation prescribed by subdivision (a) shall not apply to local safety members, or patrol members, as defined in Section 20390 of the Government Code, of the Public Employees' Retirement System. This subdivision shall be applied retroactively.

(Amended by Stats. 2001, Ch. 589, Sec. 2. Effective January 1, 2002.)

4708. Upon application of any party in interest for a death benefit provided by this division on the death of an employee member of the Public Employees' Retirement System, the latter shall be joined as a defendant, and the appeals board shall determine whether the death resulted from injury or illness arising out of and in the course of his employment, for the purpose of enabling the appeals board to apply the provision of this division and the board of administration to apply the provisions of the Public Employees' Retirement Law.

(Amended by Stats. 1969, Ch. 639.)

4709. (a) Notwithstanding any other law, a dependent of a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, or 830.6 of the Penal Code, or a Sheriff's Special Officer of the County of Orange, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100) shall be entitled to a scholarship at any qualifying institution described in subdivision (l) of Section 69432.7 of the Education Code. The scholarship shall be in an amount equal to the amount provided a student who has been awarded a Cal Grant scholarship as specified in Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3 of the Education Code.

(b) A dependent of an officer or employee of the Department of Corrections and Rehabilitation or the Department of Corrections and Rehabilitation, Division of Juvenile Justice, described in Section 20403 of the Government Code, who is killed in the performance of duty, or who dies or is totally disabled as a result of an accident or an injury incurred in the performance of duty, when the death, accident, or injury is caused by the direct action of an inmate, and is compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(c) Notwithstanding any other law, a dependent of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or injury incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(d) Nothing in this section shall be interpreted to allow the admittance of the dependent into a college or university unless the dependent is otherwise qualified to gain admittance to the college or university.

(e) The scholarship provided for by this section shall be paid out of funds annually appropriated in the Budget Act to the Student Aid Commission established by Article 2 (commencing with Section 69510) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code.

(f) The receipt of a scholarship provided for by this section shall not preclude a dependent from receiving a Cal Grant award

pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education. The receipt of a Cal Grant award pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education shall not preclude a dependent from receiving a scholarship provided for by this section.

(g) As used in this section, "dependent" means the children (natural or adopted) or spouse, at the time of the death or injury, of the peace officer, law enforcement officer, or firefighter.

(h) Eligibility for a scholarship under this section shall be limited to a person who demonstrates financial need as determined by the Student Aid Commission pursuant to Article 1.5 (commencing with Section 69503) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code. For purposes of determining financial need, the proceeds of death benefits received by the dependent, including, but not limited to, a continuation of income received from the Public Employees' Retirement System, the proceeds from the federal Public Safety Officers' Benefits Act, life insurance policies, proceeds from Sections 4702 and 4703.5, any private scholarship where receipt is predicated upon the recipient being the survivor of a deceased public safety officer, the scholarship awarded pursuant to Section 68120 of the Education Code, and any interest received from these benefits, shall not be considered.

(Amended by Stats. 2013, Ch. 76, Sec. 143. Effective January 1, 2014.)

Article 4.5. Public Official Death Benefits

(Article 4.5 added by Stats. 1979, Ch. 983.)

4720. As used in this article:

(a) "Elected public official" means any person other than the President or Vice President of the United States who holds any federal, state, local, or special district elective office as a result of winning election in California to such office or being appointed to fill a vacancy in such office.

(b) "Assassination" means the killing of an elected public official as a direct result of an intentional act perpetrated by an individual or individuals acting to prevent, or retaliate for, the performance of official duties, acting because of the public position held by the official, or acting because of pathological reasons.

(Added by Stats. 1979, Ch. 983.)

4721. The surviving spouse or dependent minor children of an elected public official who is killed by assassination shall be entitled to a special death benefit which shall be in addition to any other benefits provided for by this division or Division 4.5 (commencing with Section 6100).

(Amended by Stats. 1983, Ch. 142, Sec. 106.)

4722. If the deceased elected public official is survived by a spouse with or without dependent minor children, such special death benefit shall be payable to the surviving spouse. If the deceased elected public official leaves no surviving spouse but one or more dependent minor children, benefits shall be paid to a guardian ad litem and trustee for such child or children appointed by the Workers' Compensation Appeals Board. In the absence of a surviving spouse and dependent minor children, the benefit shall be payable to any legally recognized dependent parent of the deceased elected public official.

(Added by Stats. 1979, Ch. 983.)

4723. The person or persons to whom the special death benefit is payable pursuant to Section 4722 shall, within one year of the date of death of the elected public official, choose either of the following benefits:

(a) An annual benefit equal to one-half of the average annual salary paid to the elected public official in his or her elected capacity, less credit for any other death benefit provided for under existing law or by public funds, except benefits payable pursuant to this division or Division 4.5 (commencing with Section 6100). Payments shall be paid not less frequently than monthly, and shall be paid from the date of death until the spouse dies or remarries, or until the youngest minor dependent child reaches the age of 18 years, whichever occurs last. If payments are being made to a dependent parent or parents they shall continue during dependency.

(b) A lump-sum benefit of one hundred fifty thousand dollars ($150,000), less any other death benefit provided for under existing law or by public funds, except benefits payable pursuant to this division or Division 4.5 (commencing with Section 6100).

(Amended by Stats. 1983, Ch. 142, Sec. 107.)

4724. The person or persons to whom the special death benefit is payable pursuant to Section 4722 shall file a claim therefor with the Department of General Services, which shall be processed pursuant to the provisions of Chapter 3 (commencing with Section 900) of Part 2 of Division 3.6 of Title 1 of the Government Code.

(Amended by Stats. 2016, Ch. 31, Sec. 192. Effective June 27, 2016.)

4725. The State Compensation Insurance Fund shall be the disbursing agent for payments made pursuant to this article and shall receive a fee for its services to be negotiated by the Department of General Services. Unless otherwise provided herein, payments shall be made in accordance with the provisions of this division.

(Amended by Stats. 2016, Ch. 31, Sec. 193. Effective June 27, 2016.)

4726. The Department of General Services and the Administrative Director of the Division of Workers' Compensation shall jointly adopt rules and regulations as may be necessary to carry out the provisions of this article.

(Amended by Stats. 2016, Ch. 31, Sec. 194. Effective June 27, 2016.)

4727. Any person who is convicted of any crime in connection with the assassination of an elected public official shall not be eligible for any benefits pursuant to this article.

(Added by Stats. 1979, Ch. 983.)

4728. (a) A dependent of an elected public official, who was intentionally killed while holding office, in retaliation for, or to prevent the performance of, an official duty, shall be entitled to a scholarship at any institution described in subdivision (k) of Section 69535 of the Education Code. The scholarship shall be in an amount equal to the amount provided a student who has been awarded a Cal Grant scholarship as specified in Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code. Eligibility for a scholarship under this section shall be limited to a person who demonstrates financial need as determined by the Student Aid Commission pursuant to Article 1.5 (commencing with Section 69503) of Chapter 2 of Part 42 of the Education Code.

(b) The scholarship provided for by this section shall be paid out of funds annually appropriated in the Budget Act to the Student Aid Commission established by Article 2 (commencing with Section 69510) of Chapter 2 of Part 42 of the Education Code.

(c) The receipt of a scholarship provided for by this section shall not preclude a dependent from receiving a Cal Grant award

pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education. The receipt of a Cal Grant award pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education shall not preclude a dependent from receiving a scholarship provided for by this section.

(d) This section shall apply to a student receiving a scholarship on the effective date of the section unless that application would result in the student receiving a scholarship on less favorable terms or in a lesser amount, in which case the student shall continue to receive the scholarship on the same terms and conditions in effect prior to the effective date of this section.

(e) As used in this section, "dependent" means the children (natural or adopted) or spouse, at the time of the death or injury, of the elected public official.

(Added by Stats. 1995, Ch. 646, Sec. 3. Effective January 1, 1996.)

Article 5. Subsequent Injuries Payments

(Article 5 enacted by Stats. 1937, Ch. 90.)

4751. If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total.

(Amended by Stats. 1959, Ch. 1034.)

4753. Such additional compensation is not in addition to but shall be reduced to the extent of any monetary payments received by the employee, from any source whatsoever, for or on account of such preexisting disability or impairment, except as to payments being made to the employee or to which he is entitled as a pension or other compensation for disability incurred in service in the armed forces of the United States, and except as to payments being made to him or to which he is entitled as assistance under the provisions of Chapter 2 (commencing with Section 11200), Chapter 3 (commencing with Section 12000), Chapter 4 (commencing with Section 12500), Chapter 5 (commencing with Section 13000), or Chapter 6 (commencing with Section 13500) of Part 3, or Part 5 (commencing with Section 17000), of Division 9 of the Welfare and Institutions Code, and excluding from such monetary payments received by the employee for or on account of such preexisting disability or impairment a sum equal to all sums reasonably and necessarily expended by the employee for or on account of attorney's fees, costs and expenses incidental to the recovery of such monetary payments.

All cases under this section and under Section 4751 shall be governed by the terms of this section and Section 4751 as in effect on the date of the particular subsequent injury.

(Amended by Stats. 1971, Ch. 438.)

4753.5. In any hearing, investigation, or proceeding, the state shall be represented by the Attorney General, or the attorneys of the Department of Industrial Relations, as appointed by the director. Expenses incident to representation, including costs for investigation, medical examinations, other expert reports, fees for witnesses, and other necessary and proper expenses, but excluding the salary of any of the Attorney General's deputies, shall be reimbursed from the Workers' Compensation Administration Revolving Fund. No witness fees or fees for medical services shall exceed those fees prescribed by the appeals board for the same services in those cases where the appeals board, by rule, has prescribed fees. Reimbursement pursuant to this section shall be in addition to, and in augmentation of, any other appropriations made or funds available for the use or support of the legal representation.

(Amended by Stats. 2006, Ch. 538, Sec. 489. Effective January 1, 2007.)

4754. The appeals board shall fix and award the amounts of special additional compensation to be paid under this article, and shall direct the State Compensation Insurance Fund to pay the additional compensation so awarded. Such additional compensation may be paid only from funds appropriated for such purpose. Out of any such appropriation the fund may reimburse itself for the cost of service rendered in payment of compensation awards pursuant to this article and maintenance of accounts and records pertaining thereto, which cost shall not exceed 5 percent of the amount of award paid.

(Amended by Stats. 1965, Ch. 1513.)

4754.5. Nothing in this article shall impair the right of the Attorney General or the Department of Industrial Relations to release by compromise any claims brought under the provisions of this article. No such compromise and release agreement is valid unless it is approved by the appeals board; however, the provisions of Sections 5000 to 5004, inclusive, of this code, shall not apply to such compromise and release agreements.

(Amended by Stats. 1981, Ch. 894, Sec. 8.)

4755. (a) The State Compensation Insurance Fund may draw from the State Treasury out of the Subsequent Injuries Benefits Trust Fund for the purposes specified in Section 4751, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate fifty thousand dollars ($50,000), to be used as a cash revolving fund. The revolving fund shall be deposited in any banks and under any conditions as the Department of Finance determines. The Controller shall draw his or her warrants in favor of the State Compensation Insurance Fund for the amounts so withdrawn and the Treasurer shall pay these warrants.

(b) Expenditures made from the revolving fund in payments on claims for any additional compensation and for adjusting services are exempted from the operation of Section 16003 of the Government Code. Reimbursement of the revolving fund for these expenditures shall be made upon presentation to the Controller of an abstract or statement of the expenditures. The abstract or statement shall be in any form as the Controller requires.

(c) The director shall assign claims adjustment services and legal representation services respecting matters concerning

subsequent injuries. The director or his or her representative may make these service assignments within the department, or he or she may contract for these services with the State Compensation Insurance Fund, for a fee in addition to that authorized by Section 4754, except insofar as these matters might conflict with the interests of the State Compensation Insurance Fund. The administrative costs associated with these services shall be reimbursed from the Workers' Compensation Administration Revolving Fund, except when a budget impasse requires advances as provided in subdivision (d) of Section 62.5. To the extent permitted by state law, the director may contract for audits or reports of services under this section.

(Amended by Stats. 2012, Ch. 728, Sec. 121. Effective January 1, 2013.)

4756. (a) The Legislature finds and declares that it is in the best interest of the State of California to provide a person, regardless of his or her citizenship or immigration status, with the benefits provided pursuant to this article, and therefore enacts this section pursuant to Section 1621(d) of Title 8 of the United States Code.

(b) A person shall not be prohibited from receiving compensation paid or payable from the Subsequent Injuries Benefits Trust Fund solely because of his or her citizenship or immigration status.

(c) It is the intent of the Legislature to override Section 15740 of Article 1 of Subchapter 2.1.1 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations.

(d) The provisions of this section are declaratory of existing law.

(Added by Stats. 2015, Ch. 290, Sec. 2. Effective January 1, 2016.)

Article 6. Special Payments to Certain Persons

(Heading of Article 6 amended by Stats. 1971, Ch. 918.)

4800. (a) Whenever any member of the Department of Justice falling within the "state peace officer/firefighter" class is disabled by injury arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the Department of Justice to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. This section shall apply only to members of the Department of Justice whose principal duties consist of active law enforcement and shall not apply to persons employed in the Department of Justice whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic or otherwise clearly not falling within the scope of active law enforcement service, even though this person is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service.

(b) This section shall apply to law enforcement officers employed by the Department of Fish and Wildlife who are described in subdivision (e) of Section 830.2 of the Penal Code.

(c) This section shall apply to harbor police officers employed by the San Francisco Port Commission who are described in Section 20402 of the Government Code.

(d) This section shall not apply to periods of disability which occur subsequent to termination of employment by resignation, retirement or dismissal. When this section does not apply, the employee shall be eligible for those benefits which would apply if this section had not been enacted.

(Amended by Stats. 2012, Ch. 559, Sec. 28. Effective January 1, 2013.)

4800.5. (a) Whenever any sworn member of the Department of the California Highway Patrol is disabled by a single injury, excluding disabilities that are the result of cumulative trauma or cumulative injuries, arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the patrol, to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. This section shall apply only to members of the Department of the California Highway Patrol whose principal duties consist of active law enforcement and shall not apply to persons employed in the Department of the California Highway Patrol whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic, or otherwise clearly not falling within the scope of active law enforcement service, even though this person is subject to occasional call or is occasionally called upon to perform the duties of active law enforcement service.

(b) Benefits payable for eligible sworn members of the Department of the California Highway Patrol whose disability is solely the result of cumulative trauma or injury shall be limited to the actual period of temporary disability or entitlement to maintenance allowance, or for one year, whichever is less.

(c) This section shall not apply to periods of disability that occur subsequent to termination of employment by resignation, retirement, or dismissal. When this section does not apply, the employee shall be eligible for those benefits that would apply had this section not been enacted.

(d) The appeals board may determine, upon request of any party, whether or not the disability referred to in this section arose out of and in the course of duty. In any action in which a dispute exists regarding the nature of the injury or the period of temporary disability or entitlement to maintenance allowance, or both, and upon the request of any party thereto, the appeals board shall determine when the disability commenced and ceased, and the amount of benefits provided by this division to which the employee is entitled during the period of this disability. The appeals board shall have the jurisdiction to award and enforce payment of these benefits, subject to subdivision (a) or (b), pursuant to Part 4 (commencing with Section 5300). A decision issued by the appeals board under this section is final and binding upon the parties subject to the rights of appeal contained in Chapter 7 (commencing with Section 5900) of Part 4.

(e) Except as provided in subdivision (g), this section shall apply for periods of disability commencing on or after January 1, 1995.

(f) This section does not apply to peace officers designated under subdivision (a) of Section 2250.1 of the Vehicle Code.

(g) Peace officers of the California State Police Division who become sworn members of the Department of the California Highway Patrol as a result of the Governor's Reorganization Plan No. 1 of 1995, other than those officers described in subdivision (f), shall be eligible for injury benefits accruing to sworn members of the Department of the California Highway Patrol under this division only for injuries occurring on or after July 12, 1995.

(Amended by Stats. 1996, Ch. 305, Sec. 42. Effective January 1, 1997.)

4801. It shall be the duty of the appeals board to determine in the case of members of the California Highway Patrol, upon request of the Department of the California Highway Patrol or Department of Justice, and, in the case of the harbor policemen, upon the request of the San Francisco Port Commission, whether or not the disability referred to in Section 4800 arose out of and in the course of duty. The appeals board shall, also, in any disputed case, determine when such disability ceases.

(Amended by Stats. 1971, Ch. 1089.)

4802. Any such member of the California Highway Patrol or Department of Justice, or any such harbor policeman, so disabled is entitled from the date of injury and regardless of retirement under the Public Employees' Retirement System, to the medical, surgical and hospital benefits prescribed by this division as part of the compensation for persons injured in the course of and arising out of their employment, at the expense of the Department of the California Highway Patrol, the Department of Justice, or the San Francisco Port Commission, as the case may be, and such expense shall be charged upon the fund out of which the compensation of the member is paid.

(Amended by Stats. 1972, Ch. 1377.)

4803. Whenever such disability of such member of the California Highway Patrol, or Department of Justice, or of such harbor policeman, continues for a period beyond one year, such member or harbor policeman shall thereafter be subject, as to disability indemnity, to the provisions of this division other than Section 4800, which refers to temporary disability only, during the remainder of the disability, except that such compensation shall be paid out of funds available for the support of the Department of the California Highway Patrol, the Department of Justice, or the San Francisco Port Commission, as the case may be, and the leave of absence shall continue.

(Amended by Stats. 1972, Ch. 1377.)

4804. No disability indemnity shall be paid to said member of the California Highway Patrol or harbor policeman as temporary disability concurrently with wages or salary payments.

(Amended by Stats. 1967, Ch. 1553.)

4804.1. Whenever any member of a University of California fire department specified in Section 3212.4 falling within the active "firefighting and prevention service" class is disabled by injury arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with a University of California fire department, to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. This section shall apply only to members of a University of California fire department whose principal duties consist of active firefighting and prevention service and shall not apply to persons employed in a University of California fire department whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic, or otherwise clearly not falling within the scope of active firefighting and prevention service, even though such person is subject to occasional call or is occasionally called upon to perform duties within the scope of active firefighting and prevention service.

(Added by Stats. 1972, Ch. 1149.)

4804.2. It shall be the duty of the appeals board to determine in the case of members of a University of California fire department specified in Section 4804. 1, upon request of the Regents of the University of California, whether or not the disability referred to in Section 4804.1 arose out of and in the course of duty. The appeals board shall, also in any disputed case, determine when such disability ceases.

(Added by Stats. 1972, Ch. 1149.)

4804.3. Any such member of a University of California fire department specified in Section 4804.1, so disabled is entitled from the date of injury and regardless of retirement under the Public Employees' Retirement System, or other retirement system, to the medical, surgical, and hospital benefits prescribed by this division as part of the compensation for persons injured in the course of and arising out of their employment, at the expense of the Regents of the University of California, and such expense shall be charged upon the fund out of which the compensation of the member is paid.

(Added by Stats. 1972, Ch. 1149.)

4804.4. Whenever such disability of such member of a University of California fire department, specified in Section 4804.1, continues for a period beyond one year, such member shall thereafter be subject, as to disability indemnity, to the provisions of this division other than Section 4804.1, which refers to temporary disability only, during the remainder of the disability, except that such compensation shall be paid out of funds available for the support of the Regents of the University of California, and the leave of absence shall continue.

(Added by Stats. 1972, Ch. 1149.)

4804.5. No disability indemnity shall be paid to said member of a University of California fire department, specified in Section 4804.1, as temporary disability concurrently with wages or salary payments.

(Added by Stats. 1972, Ch. 1149.)

4806. Whenever any member of the University of California Police Department falling within the "law enforcement" class is disabled by injury arising out of and in the course of his duties, he shall become entitled, regardless of his period of service with the police department, to leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. This section shall apply only to members of the University of California Police Department whose principal duties consist of active law enforcement, and shall not apply to persons employed in the University of California Police Department whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic or otherwise clearly not falling within the scope of active law enforcement service, even though such person is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service.

This section shall apply only to those members of the University of California Police Department specified in Section 3213.

(Added by Stats. 1971, Ch. 918.)

4807. It shall be the duty of the appeals board to determine, in the case of members of the University of California Police Department, upon the request of the Regents of the University of California, whether or not the disability referred to in Section 4806 arose out of and in the course of duty. The appeals board shall, also in any disputed case, determine when such disability ceases.

(Added by Stats. 1971, Ch. 918.)

4808. Any such member of the University of California Police Department so disabled is entitled from the date of injury, and regardless of retirement under either the University of California Retirement System or Public Employees' Retirement System, to the medical, surgical, and hospital benefits prescribed by this division as part of the compensation for persons injured in the course of and arising out of their employment, at the expense of the Regents of the University of California, and such expense shall be charged upon the fund out of which the compensation of the member is paid.

(Added by Stats. 1971, Ch. 918.)

4809. Whenever such disability of such member of the University of California Police Department continues for a period beyond one year, such member shall thereafter be subject, as to disability indemnity, to the provisions of this division other than

Section 4806, which refers to temporary disability only, during the remainder of the disability, except that such compensation shall be paid out of funds available for the support of the Regents of the University of California and the leave of absence shall continue.

(Added by Stats. 1971, Ch. 918.)

4810. No disability indemnity shall be paid to such member of the University of California Police Department as temporary disability concurrently with wages or salary payments.

(Added by Stats. 1971, Ch. 918.)

4816. Pursuant to a collective bargaining agreement applicable to members of the California State University Police Department, whenever any member of that police department falling within the "law enforcement" class is disabled by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the police department, to enhanced industrial disability leave equivalent to the injured employee's net take home salary on the date of occurrence of the injury. For the purposes of this section, "net take home salary" means the amount of salary received after federal income tax, state income tax, and the employee's retirement contribution has been deducted from the employee's gross salary, in lieu of disability payments under this chapter, for a period of not exceeding one year. No benefits shall be paid under this section for any psychiatric disability or any physical disability arising from a psychiatric injury.

This section shall apply only to members of the California State University Police Department whose principal duties consist of active law enforcement, and shall not apply to persons employed in the California State University Police Department whose principal duties are those of telephone operator, clerk, stenographer, machinist, mechanic, or otherwise clearly not falling within the scope of active law enforcement service, even though the person is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service.

(Added by Stats. 1994, Ch. 50, Sec. 1. Effective January 1, 1995.)

4817. It shall be the duty of the appeals board to determine, in the case of members of the California State University Police Department, upon the request of the Board of Trustees of the California State University, whether or not the disability referred to in Section 4816 arose out of and in the course of duty. The appeals board shall, also in any disputed case, determine when such disability ceases.

(Added by Stats. 1994, Ch. 50, Sec. 2. Effective January 1, 1995.)

4819. Whenever the disability of a member of the California State University Police Department continues for a period beyond one year, that member shall thereafter be subject, as to disability indemnity, to the provisions of this division other than Section 4816, which refers to temporary disability only, during the remainder of the disability.

(Added by Stats. 1994, Ch. 50, Sec. 3. Effective January 1, 1995.)

4820. No disability indemnity shall be paid to a member of the California State University Police Department as temporary disability concurrently with wages or salary payments.

(Added by Stats. 1994, Ch. 50, Sec. 4. Effective January 1, 1995.)

Article 7. City Police and Firemen, Sheriffs, and Others

(Heading of Article 7 amended by Stats. 1968, Ch. 109.)

4850. (a) Whenever any person listed in subdivision (b), who is employed on a regular, full-time basis, and is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments, if any, that would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class or by the City of San Diego.

(10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(12) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a), and shall not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments that, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or by a city, county, or district firefighter, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government

Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

(f) This section shall not apply to any persons described in paragraph (1) or (2) of subdivision (b) who are employees of the City and County of San Francisco.

(g) Amendments to subdivision (f) made by the act adding this subdivision shall be applied retroactively to January 1, 2010.

(Amended by Stats. 2013, Ch. 66, Sec. 1. Effective January 1, 2014. Note: Subdivision (g) was added by Stats. 2010, Ch. 74.)

4850.3. A city, county, special district, or harbor district that is a member of the Public Employees' Retirement System, is subject to the County Employees Retirement Law of 1937, or is subject to the Los Angeles City Employees' Retirement System, may make advanced disability pension payments to any local safety officer who has qualified for benefits under Section 4850 and is approved for a disability allowance. The payments shall be no less than 50 percent of the estimated highest average annual compensation earnable by the local safety officer during the three consecutive years of employment immediately preceding the effective date of his or her disability retirement, unless the local safety officer chooses an optional settlement in the permanent disability retirement application process which would reduce the pension allowance below 50 percent. In the case where the local safety officer's choice lowers the disability pension allowance below 50 percent of average annual compensation as calculated, the advanced pension payments shall be set at an amount equal to the disability pension allowance. If a local agency has an adopted policy of paying for any accumulated sick leave after the safety officer is eligible for a disability allowance, the advanced disability pension payments under this section may only be made when the local safety officer has exhausted all sick leave payments. Advanced disability pension payments shall not be considered a salary under this or any other provision of law. All advanced disability pension payments made by a local agency with membership in the Public Employees' Retirement System shall be reimbursed by the Public Employees' Retirement System pursuant to Section 21293.1 of the Government Code.

(Amended by Stats. 2000, Ch. 920, Sec. 2. Effective January 1, 2001.)

4850.4. (a) A city, county, special district, or harbor district that is a member of the Public Employees' Retirement System, is subject to the County Employees Retirement Law of 1937, or is subject to the Los Angeles City Employees' Retirement Systems, shall make advanced disability pension payments in accordance with Section 4850.3 unless any of the following is applicable:

(1) After an examination of the employee by a physician, the physician determines that there is no discernable injury to, or illness of, the employee.

(2) The employee was incontrovertibly outside the course of his or her employment duties when the injury occurred.

(3) There is proof of fraud associated with the filing of the employee's claim.

(b) Any employer described in subdivision (a) who is required to make advanced disability pension payments, shall make the payments commencing no later than 30 days from the date of issuance of the last disbursed of the following:

(1) The employee's last regular payment of wages or salary.

(2) The employee's last payment of benefits under Section 4850.

(3) The employee's last payment for sick leave.

(c) The advanced disability payments shall continue until the claimant is approved or disapproved for a disability allowance pursuant to final adjudication as provided by law.

(d) An employer described in subdivision (a) shall be required to make advanced disability pension payments only if the employee does all of the following:

(1) Files an application for disability retirement at least 60 days prior to the payment of benefits pursuant to subdivision (a).

(2) Fully cooperates in providing the employer with medical information and in attending all statutorily required medical examinations and evaluations set by the employer.

(3) Fully cooperates with the evaluation process established by the retirement plan.

(e) The 30-day period for the commencement of payments pursuant to subdivision (b) shall be tolled by whatever period of time is directly related to the employee's failure to comply with the provisions of subdivision (d).

(f) After final adjudication, if an employee's disability application is denied, the local agency and the employee shall arrange for the employee to repay any advanced disability pension payments received by the employee pursuant to this subdivision. The repayment plan shall take into account the employee's ability to repay the advanced disability payments received. Absent an agreement on repayment, the matter shall be submitted for a local agency administrative appeals remedy that includes an independent level of resolution to determine a reasonable repayment plan. If repayment is not made according to the repayment plan, the local agency may take reasonable steps, including litigation, to recover the payments advanced.

(Amended (as added by Stats. 2002, Ch. 189) by Stats. 2002, Ch. 877, Sec. 3. Effective January 1, 2003.)

4850.5. Any firefighter employed by the County of San Luis Obispo, and the sheriff or any officer or employee of the sheriff's office of the County of San Luis Obispo, and any county probation officer, group counselor, or juvenile services officer, or any officer or employee of a probation office, employed by the County of San Luis Obispo, shall, upon the adoption of a resolution of the board of supervisors so declaring, be entitled to the benefits of this article, if otherwise entitled to these benefits, even though the employee is not a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(Amended by Stats. 1999, Ch. 970, Sec. 2. Effective January 1, 2000.)

4850.7. (a) Any firefighter employed by a dependent or independent fire district may be entitled to the benefits of this article, if otherwise entitled to these benefits, even though the employee is not a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code).

(b) The issue of whether the firefighters employed by a fire district are entitled to the benefits of this article is subject to Article 10 (commencing with Section 3500) of Chapter 3 of Division 4 of Title 1 of the Government Code.

(c) If the governing body of the district agrees that the benefits shall apply, it shall adopt a resolution to that effect.

(Added by Stats. 1990, Ch. 905, Sec. 1.)

4851. The governing body of any city, county, or city and county, in addition to anyone else properly entitled, including the Public Employees' Retirement System, may request the appeals board to determine in any case, and the appeals board shall determine, whether or not the disability referred to in Section 4850 arose out of and in the course of duty. The appeals board shall also, in any disputed case, determine when the disability

commenced and ceased, and the amount of benefits provided by this division to which the employee is entitled during the period of the disability. The appeals board shall have jurisdiction to award and enforce payment of these benefits pursuant to Part 4 (commencing with Section 5300).

(Amended by Stats. 1985, Ch. 1050, Sec. 1.)

4852. The provisions of this article do not diminish or affect the right of any such officer or employee to the medical, surgical, and hospital benefits prescribed by this division.

(Amended by Stats. 1949, Ch. 1143.)

4853. Whenever such disability of any such officer or employee continues for a period beyond one year, such member shall thereafter be subject as to disability indemnity to the provisions of this division other than Section 4850 during the remainder of the period of said disability or until the effective date of his retirement under the Public Employees' Retirement Act, and the leave of absence shall continue.

(Amended by Stats. 1969, Ch. 639.)

4854. No disability indemnity shall be paid to any such officer or employee concurrently with wages or salary payments.

(Amended by Stats. 1951, Ch. 1378.)

4855. This article shall not be applicable to individuals who are appointed as reserve public safety employees and are deemed to be employees of a county, city, town or district for workmen's compensation purposes pursuant to Section 3362.

(Added by Stats. 1968, Ch. 1178.)

4856. (a) Whenever any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a Sheriff's Special Officer of the County of Orange, is killed in the performance of his or her duty or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty, the employer shall continue providing health benefits to the deceased employee's spouse under the same terms and conditions provided prior to the death, or prior to the accident or injury that caused the death, of the employee unless the surviving spouse elects to receive a lump-sum survivors benefit in lieu of monthly benefits. Minor dependents shall continue to receive benefits under the coverage provided the surviving spouse or, if there is no surviving spouse, until the age of 21 years. However, pursuant to Section 22822 of the Government Code, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

(b) Subdivision (a) also applies to the employer of any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who was killed in the performance of his or her duty or who died as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty prior to September 30, 1996.

(Amended by Stats. 2012, Ch. 819, Sec. 2. Effective January 1, 2013.)

Part 3. Compensation Claims

(Part 3 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Payment and Assignment

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

4900. No claim for compensation, except as provided in Section 96, is assignable before payment, but this provision does not affect the survival thereof.

(Amended by Stats. 1953, Ch. 555.)

4901. No claim for compensation nor compensation awarded, adjudged, or paid, is subject to be taken for the debts of the party entitled to such compensation except as hereinafter provided.

(Enacted by Stats. 1937, Ch. 90.)

4902. No compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled thereto unless otherwise ordered by the appeals board. No payment made to an attorney at law or in fact or other agent in violation of this section shall be credited to the employer.

(Amended by Stats. 1965, Ch. 1513.)

4903. The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600), and to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2, except those disputes subject to independent medical review or independent bill review.

(c) The reasonable value of the living expenses of an injured employee or of his or her dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in the proportion that the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant to subdivision (a) of Section 11477 of the Welfare and Institutions Code, of the spouse, a former spouse, or minor children. A collection received as a result of a lien against a workers' compensation award imposed pursuant to this subdivision for payment of child support ordered by a court

shall be credited as provided in Section 695.221 of the Code of Civil Procedure.

(f) The amount of unemployment compensation disability benefits that have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether the benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(h) The amount of family temporary disability insurance benefits that have been paid to the injured employee pursuant to the Unemployment Insurance Code for the same day or days for which that employee receives, or is entitled to receive, temporary total disability indemnity payments under this division, provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(i) The amount of indemnification granted by the California Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2014, Ch. 217, Sec. 3. Effective January 1, 2015.)

4903.05. (a) Every lien claimant shall file its lien with the appeals board in writing upon a form approved by the appeals board. The lien shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service upon the injured worker or, if deceased, upon the worker's dependents, the employer, the insurer, and the respective attorneys or other agents of record. For liens filed on or after January 1, 2017, the lien shall also be accompanied by an original bill in addition to either the full statement or itemized voucher supporting the lien. Medical records shall be filed only if they are relevant to the issues being raised by the lien.

(b) Any lien claim for expenses under subdivision (b) of Section 4903 or for claims of costs shall be filed with the appeals board electronically using the form approved by the appeals board. The lien shall be accompanied by a proof of service and any other documents that may be required by the appeals board. The service requirements for Section 4603.2 are not modified by this section.

(c) (1) For liens filed on or after January 1, 2017, any lien claim for expenses under subdivision (b) of Section 4903 that is subject to a filing fee under this section shall be accompanied at the time of filing by a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following:

(A) Is the employee's treating physician providing care through a medical provider network.

(B) Is the agreed medical evaluator or qualified medical evaluator.

(C) Has provided treatment authorized by the employer or claims administrator under Section 4610.

(D) Has made a diligent search and determined that the employer does not have a medical provider network in place.

(E) Has documentation that medical treatment has been neglected or unreasonably refused to the employee as provided by Section 4600.

(F) Can show that the expense was incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.

(G) Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under rules adopted by the administrative director.

(2) Lien claimants shall have until July 1, 2017, to file a declaration pursuant to paragraph (1) for any lien claim filed before January 1, 2017, for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.

(3) The failure to file a signed declaration under this subdivision shall result in the dismissal of the lien with prejudice by operation of law. Filing of a false declaration shall be grounds for dismissal with prejudice after notice.

(d) All liens filed on or after January 1, 2013, for expenses under subdivision (b) of Section 4903 or for claims of costs shall be subject to a filing fee as provided by this subdivision.

(1) The lien claimant shall pay a filing fee of one hundred fifty dollars ($150) to the Division of Workers' Compensation prior to filing a lien and shall include proof that the filing fee has been paid. The fee shall be collected through an electronic payment system that accepts major credit cards and any additional forms of electronic payment selected by the administrative director. If the administrative director contracts with a service provider for the processing of electronic payments, any processing fee shall be absorbed by the division and not added to the fee charged to the lien filer.

(2) On or after January 1, 2013, a lien submitted for filing that does not comply with paragraph (1) shall be invalid, even if lodged with the appeals board, and shall not operate to preserve or extend any time limit for filing of the lien.

(3) The claims of two or more providers of goods or services shall not be merged into a single lien.

(4) The filing fee shall be collected by the administrative director. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund and applied for the purposes of that fund.

(5) The administrative director shall adopt reasonable rules and regulations governing the procedure for the collection of the filing fee, including emergency regulations as necessary to implement this section.

(6) Any lien filed for goods or services that are not the proper subject of a lien may be dismissed upon request of a party by verified petition or on the appeals board's own motion. If the lien is dismissed, the lien claimant will not be entitled to reimbursement of the filing fee.

(7) No filing fee shall be required for a lien filed by a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, a group disability insurer under a policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, a self-insured employee welfare benefit plan, as defined in Section 10121 of the Insurance Code, that is issued in this state, a Taft-Hartley health and welfare fund, or a publicly funded program providing medical benefits on a nonindustrial basis.

(Amended by Stats. 2016, Ch. 868, Sec. 8. Effective January 1, 2017.)

4903.06. (a) Any lien filed pursuant to subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was

filed as a lien prior to January 1, 2013, shall be subject to a lien activation fee unless the lien claimant provides proof of having paid a filing fee as previously required by former Section 4903.05 as added by Chapter 639 of the Statutes of 2003.

(1) The lien claimant shall pay a lien activation fee of one hundred dollars ($100) to the Division of Workers' Compensation on or before January 1, 2014. The fee shall be collected through an electronic payment system that accepts major credit cards and any additional forms of electronic payment selected by the administrative director. If the administrative director contracts with a service provider for the processing of electronic payments, any processing fee shall be absorbed by the division and not added to the fee charged to the lien filer.

(2) The lien claimant shall include proof of payment of the filing fee or lien activation fee with the declaration of readiness to proceed.

(3) The lien activation fee shall be collected by the administrative director. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund and applied for the purposes of that fund. The administrative director shall adopt reasonable rules and regulations governing the procedure for the collection of the lien activation fee and to implement this section, including emergency regulations, as necessary.

(4) All lien claimants that did not file the declaration of readiness to proceed and that remain a lien claimant of record at the time of a lien conference shall submit proof of payment of the activation fee at the lien conference. If the fee has not been paid or no proof of payment is available, the lien shall be dismissed with prejudice.

(5) Any lien filed pursuant to subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, for which the filing fee or lien activation fee has not been paid by January 1, 2014, is dismissed by operation of law.

(b) This section shall not apply to any lien filed by a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, a group disability insurer under a policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, a self-insured employee welfare benefit plan, as defined in Section 10121 of the Insurance Code, that is issued in this state, a Taft-Hartley health and welfare fund, or a publicly funded program providing medical benefits on a nonindustrial basis.

(Added by Stats. 2012, Ch. 363, Sec. 64. Effective January 1, 2013.)

4903.07. (a) A lien claimant shall be entitled to an order or award for reimbursement from the employer of a lien filing fee or lien activation fee, together with interest at the rate allowed on civil judgments, only if all of the following conditions are satisfied:

(1) Not less than 30 days before filing the lien for which the filing fee was paid or filing the declaration of readiness for which the lien activation fee was paid, the lien claimant has made written demand for settlement of the lien claim for a clearly stated sum which shall be inclusive of all claims of debt, interest, penalty, or other claims potentially recoverable on the lien.

(2) The defendant fails to accept the settlement demand in writing within 20 days of receipt of the demand for settlement, or within any additional time as may be provide by the written demand.

(3) After submission of the lien dispute to the appeals board or an arbitrator, a final award is made in favor of the lien claimant of a specified sum that is equal to or greater than the amount of the settlement demand. The amount of the interest and filing fee or lien activation fee shall not be considered in determining whether the award is equal to or greater than the demand.

(b) This section shall not preclude an order or award of reimbursement of the filing fee or activation fee pursuant to the express terms of an agreed disposition of a lien dispute.

(Amended by Stats. 2014, Ch. 217, Sec. 4. Effective January 1, 2015.)

4903.1. (a) The appeals board or arbitrator, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed with it pursuant to Section 4903.05, whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy, including a loss-of-income policy or a self-insured employee welfare benefit plan, and its award or approval shall provide for reimbursement for benefits paid or services provided under these plans as follows:

(1) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment, but denies the applicant reimbursement for self-procured medical costs solely because of lack of notice to the applicant's employer of his or her need for hospital, surgical, or medical care, the appeals board shall nevertheless award a lien against the employee's recovery, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy or a self-insured employee welfare benefit plan, subject to the provisions described in subdivision (b).

(2) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment, and makes an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy or a self-insured employee welfare benefit plan, subject to the provisions of subdivision (b). For purposes of this paragraph, benefits paid or services provided by a self-insured employee welfare benefit plan shall be determined notwithstanding the official medical fee schedule adopted pursuant to Section 5307.1.

(3) (A) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss-of-time benefits and for loss-of-time benefits paid by a self-insured employee welfare benefit plan. The lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. A lien shall not be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss-of-time benefits on account of workers' compensation benefits.

(B) For purposes of this paragraph, "self-insured employee welfare benefit plan" means any plan, fund, or program that is established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, other than through the purchase of insurance, either of the following:

(i) Medical, surgical, or hospital care or benefits.

(ii) Monetary or other benefits in the event of sickness, accident, disability, death, or unemployment.

(4) If the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the appeals board shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

(b) Notwithstanding subdivision (a), payment or reimbursement shall not be allowed, whether payable by the employer or payable as a lien against the employee's recovery, for any expense incurred as provided by Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, nor shall the employee have any liability for the expense, if at the time the expense was incurred the provider either knew or in the exercise of reasonable diligence should have known that the condition being treated was caused by the employee's present or prior employment, unless at the time the expense was incurred at least one of the following conditions was met:

(1) The expense was incurred for services authorized by the employer.

(2) The expense was incurred for services furnished while the employer failed or refused to furnish treatment as required by subdivision (c) of Section 5402.

(3) The expense was necessarily incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.

(c) The changes made to this section by Senate Bill 457 of the 2011–12 Regular Session do not modify in any way the rights or obligations of the following:

(1) Any health care provider to file and prosecute a lien pursuant to subdivision (b) of Section 4903.

(2) A payer to conduct utilization review pursuant to Section 4610.

(3) Any party in complying with the requirements under Section 4903.

(Amended by Stats. 2012, Ch. 712, Sec. 1.5. Effective January 1, 2013.)

4903.2. Where a lien claimant is reimbursed pursuant to subdivision (f) or (g) of Section 4903 or Section 4903.1, for benefits paid or services provided, the appeals board may award an attorney's fee to the applicant's attorney out of the lien claimant's recovery if the appeals board determines that all of the following occurred:

(a) The lien claimant received notice of all hearings following the filing of the lien and received notice of intent to award the applicant's attorney a fee.

(b) An attorney or other representative of the lien claimant did not participate in the proceedings before the appeals board with respect to the lien claim.

(c) There were bona fide issues respecting compensability, or respecting allowability of the lien, such that the services of an attorney were reasonably required to effectuate recovery on the claim of lien and were instrumental in effecting the recovery.

(d) The case was not disposed of by compromise and release.

The amount of the attorney's fee out of the lien claimant's recovery shall be based on the extent of applicant's attorney's efforts on behalf of the lien claimant. The ratio of the amount of the attorney's fee awarded against the lien claimant's recovery to that recovery shall not exceed the ratio of the amount of the attorney's fee awarded against the applicant's award to that award.

(Amended by Stats. 1983, Ch. 142, Sec. 108.)

4903.3. The director, as administrator of the Uninsured Employers Fund, may, in his discretion, provide compensation, including medical treatment, from the Uninsured Employers Fund in cases to which the director is a party before the issuance of any award, if such compensation is not being provided to the applicant.

The appeals board shall determine and allow as a first lien against any sum to be paid as compensation the amount of compensation, including the cost of medical treatment, provided by the director pursuant to this section.

(Added by Stats. 1981, Ch. 894, Sec. 9.)

4903.4. (a) If a dispute arises concerning a lien for expenses incurred by or on behalf of the injured employee as provided by Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, the appeals board may resolve the dispute in a separate proceeding, which may include binding arbitration upon agreement of the employer, lien claimant, and the employee, if the employee remains a party to the dispute, according to the rules of practice and procedure.

(b) If the dispute is heard at a separate proceeding it shall be calendared for hearing or hearings as determined by the appeals board based upon the resources available to the appeals board and other considerations as the appeals board deems appropriate and shall not be subject to Section 5501.5.

(Amended by Stats. 2013, Ch. 287, Sec. 6. Effective January 1, 2014.)

4903.5. (a) A lien claim for expenses as provided in subdivision (b) of Section 4903 shall not be filed after three years from the date the services were provided, nor more than 18 months after the date the services were provided, if the services were provided on or after July 1, 2013.

(b) Notwithstanding subdivision (a), any health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, group disability insurer under a policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, self-insured employee welfare benefit plan issued in this state as defined in Section 10121 of the Insurance Code, Taft-Hartley health and welfare fund, or publicly funded program providing medical benefits on a nonindustrial basis, may file a lien claim for expenses as provided in subdivision (b) of Section 4903 within 12 months after the entity first knew or in the exercise of reasonable diligence should have known that an industrial injury is being claimed, but in no event later than five years from the date the services were provided to the employee.

(c) The injured worker shall not be liable for any underlying obligation if a lien claim has not been filed and served within the allowable period. Except when the lien claimant is the applicant as provided in Section 5501 or as otherwise permitted by rules of practice and procedure adopted by the appeals board, a lien claimant shall not file a declaration of readiness to proceed in any case until the case-in-chief has been resolved.

(d) This section shall not apply to civil actions brought under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the federal Racketeer Influenced and Corrupt Organization Act (Chapter 96 (commencing with Section 1961) of Title 18 of the United States Code) based on concerted action with other insurers that are not parties to the case in which the lien or claim is filed.

(Amended by Stats. 2012, Ch. 363, Sec. 68. Effective January 1, 2013.)

4903.6. (a) Except as necessary to meet the requirements of Section 4903.5, a lien claim or application for adjudication shall not be filed or served under subdivision (b) of Section 4903 until both of the following have occurred:

(1) Sixty days have elapsed after the date of acceptance or rejection of liability for the claim, or expiration of the time provided for investigation of liability pursuant to subdivision (b) of Section 5402, whichever date is earlier.

(2) Either of the following:

(A) The time provided for payment of medical treatment bills pursuant to Section 4603.2 has expired and, if the employer objected to the amount of the bill, the reasonable fee has been determined pursuant to Section 4603.6, and, if authorization for the medical treatment has been disputed pursuant to Section 4610, the medical necessity of the medical treatment has been determined pursuant to Sections 4610.5 and 4610.6.

(B) The time provided for payment of medical-legal expenses pursuant to Section 4622 has expired and, if the employer objected to the amount of the bill, the reasonable fee has been determined pursuant to Section 4603.6.

(b) All lien claimants under Section 4903 shall notify the employer and the employer's representative, if any, and the employee and his or her representative, if any, and the appeals board within five working days of obtaining, changing, or discharging representation by an attorney or nonattorney representative. The notice shall set forth the legal name, address, and telephone number of the attorney or nonattorney representative.

(c) A declaration of readiness to proceed shall not be filed for a lien under subdivision (b) of Section 4903 until the underlying case has been resolved or where the applicant chooses not to proceed with his or her case.

(d) With the exception of a lien for services provided by a physician as defined in Section 3209.3, a lien claimant shall not be entitled to any medical information, as defined in subdivision (g) of Section 56.05 of the Civil Code, about an injured worker without prior written approval of the appeals board. Any order authorizing disclosure of medical information to a lien claimant other than a physician shall specify the information to be provided to the lien claimant and include a finding that the information is relevant to the proof of the matter for which the information is sought. The appeals board shall adopt reasonable regulations to ensure compliance with this section, and shall take any further steps as may be necessary to enforce the regulations, including, but not limited to, impositions of sanctions pursuant to Section 5813.

(e) The prohibitions of this section shall not apply to lien claims, applications for adjudication, or declarations of readiness to proceed filed by or on behalf of the employee, or to the filings by or on behalf of the employer.

(Amended by Stats. 2013, Ch. 287, Sec. 7. Effective January 1, 2014.)

4903.8. (a) (1) Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred, who is the lien owner, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.

(2) All liens filed pursuant to subdivision (b) of Section 4903 shall be filed in the name of the lien owner only, and no payment shall be made to any lien claimant without evidence that he or she is the owner of that lien.

(3) Paragraph (1) does not apply to an assignment that was completed prior to January 1, 2013, or that was required by a contract that became enforceable and irrevocable prior to January 1, 2013. This paragraph is declarative of existing law.

(4) For liens filed after January 1, 2017, the lien shall not be assigned unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee. The assignment of a lien, in violation of this paragraph is invalid by operation of law.

(b) If there has been an assignment of a lien, either as an assignment of all right, title, and interest in the accounts receivable or as an assignment for collection, a true and correct copy of the assignment shall be filed and served.

(1) If the lien is filed on or after January 1, 2013, and the assignment occurs before the filing of the lien, the copy of the assignment shall be served at the time the lien is filed.

(2) If the lien is filed on or after January 1, 2013, and the assignment occurs after the filing of the lien, the copy of the assignment shall be served within 20 days of the date of the assignment.

(3) If the lien is filed before January 1, 2013, the copy of the assignment shall be served by January 1, 2014, or with the filing of a declaration of readiness or at the time of a lien hearing, whichever is earliest.

(c) If there has been more than one assignment of the same receivable or bill, the appeals board may set the matter for hearing on whether the multiple assignments constitute bad-faith actions or tactics that are frivolous, harassing, or intended to cause unnecessary delay or expense. If so found by the appeals board, appropriate sanctions, including costs and attorney's fees, may be awarded against the assignor, assignee, and their respective attorneys.

(d) At the time of filing of a lien on or after January 1, 2013, or in the case of a lien filed before January 1, 2013, at the earliest of the filing of a declaration of readiness, a lien hearing, or January 1, 2014, supporting documentation shall be filed including one or more declarations under penalty of perjury by a natural person or persons competent to testify to the facts stated, declaring both of the following:

(1) The services or products described in the bill for services or products were actually provided to the injured employee.

(2) The billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee.

(e) A lien submitted for filing on or after January 1, 2013, for expenses provided in subdivision (b) of Section 4903, that does not comply with the requirements of this section shall be deemed to be invalid, whether or not accepted for filing by the appeals board, and shall not operate to preserve or extend any time limit for filing of the lien.

(f) This section shall take effect without regulatory action. The appeals board and the administrative director may promulgate regulations and forms for the implementation of this section.

(Amended by Stats. 2016, Ch. 868, Sec. 9. Effective January 1, 2017.)

4904. (a) If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien in favor of the Employment Development Department, the claim is a lien against any amount thereafter payable as temporary or permanent disability compensation, subject to the determination of the amount and approval of the lien by the appeals board. When the Employment Development Department has served an insurer or employer with a lien claim, the insurer or employer shall notify the Employment

Development Department, in writing, as soon as possible, but in no event later than 15 working days after commencing disability indemnity payments. When a lien has been served on an insurer or an employer by the Employment Development Department, the insurer or employer shall notify the Employment Development Department, in writing, within 10 working days of filing an application for adjudication, a stipulated award, or a compromise and release with the appeals board.

(b) (1) In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for any permanent disability indemnity resulting solely from the same injury or illness or temporary disability indemnity, or both, is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code.

(2) In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for temporary total disability is made.

(3) In determining the amount of lien to be allowed for family temporary disability insurance benefits under subdivision (h) of Section 4903, the appeals board shall allow the lien in the amount of benefits that it finds were paid for the same day or days for which an award of compensation for temporary total disability is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code.

(c) In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and release agreement, an amount out of the settlement to be paid to any lien claimant claiming under subdivision (f), (g), or (h) of Section 4903. If the lien claimant objects to the amount proposed for payment of its lien under a compromise and release settlement or stipulation, the appeals board shall determine the extent of the lien claimant's entitlement to reimbursement on its lien and make and file findings on all facts involved in the controversy over this issue in accordance with Section 5313. The appeals board may approve a compromise and release agreement or stipulation which proposes the disallowance of a lien, in whole or in part, only where there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation. The determination of the appeals board, subject to petition for reconsideration and to the right of judicial review, as to the amount of lien allowed under subdivision (f), (g), or (h) of Section 4903, whether in connection with an award of compensation or the approval of a compromise and release agreement, shall be binding on the lien claimant, the applicant, and the defendant, insofar as the right to benefits paid under the Unemployment Insurance Code for which the lien was claimed. The appeals board may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments.

(d) Where unemployment compensation disability benefits, including family temporary disability insurance benefits, have been paid pursuant to the Unemployment Insurance Code while reconsideration of an order, decision, or award is pending, or has been granted, the appeals board shall determine and allow a final amount on the lien as of the date the board is ready to issue its decision denying a petition for reconsideration or affirming, rescinding, altering or amending the original findings, order, decision, or award.

(e) The appeals board shall not be prohibited from approving a compromise and release agreement on all other issues and deferring to subsequent proceedings the determination of a lien claimant's entitlement to reimbursement if the defendant in any of these proceedings agrees to pay the amount subsequently determined to be due under the lien claim.

(f) The amendments made to this section by the act adding this subdivision are declaratory of existing law, and shall not constitute good cause to reopen, rescind, or amend any final order, decision, or award of the appeals board.

(Amended by Stats. 2012, Ch. 363, Sec. 71. Effective January 1, 2013.)

4904.1. The payment of liens as provided in Section 4904, shall in no way affect the commencement of immediate payments on any balance of the award to the injured claimant where an installment payment for his disability has been determined.

(Added by Stats. 1957, Ch. 1241.)

4905. Except with regard to liens as permitted by subdivision (b) of Section 4903, if it appears in any proceeding pending before the appeals board that a lien should be allowed if it had been duly requested by the party entitled thereto, the appeals board may, without any request for such lien having been made, order the payment of the claim to be made directly to the person entitled, in the same manner and with the same effect as though the lien had been regularly requested, and the award to such person shall constitute a lien against unpaid compensation due at the time of service of the award.

(Amended by Stats. 2012, Ch. 363, Sec. 72. Effective January 1, 2013.)

4906. (a) A charge, claim, or agreement for the legal services or disbursements mentioned in subdivision (a) of Section 4903, or for the expense mentioned in subdivision (b) of Section 4903, is not enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes a reasonable amount, but payment pursuant to subdivision (a) of Section 4903 or Section 5710 shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board and the sending of that form to the employer, or to the insurer or third-party administrator, if either is known, by the attorney.

(b) An attorney or agent shall not demand or accept any fee from an employee or dependent of an employee for the purpose of representing the employee or dependent of an employee in any proceeding of the division, appeals board, or any appellate procedure related thereto until the amount of the fee has been approved or set by the appeals board.

(c) Any fee agreement shall be submitted to the appeals board for approval within 10 days after the agreement is made.

(d) In establishing a reasonable attorney's fee, consideration shall be given to the responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved, and the results obtained.

(e) At the initial consultation, an attorney shall furnish the employee a written disclosure form promulgated by the administrative director which shall clearly and prominently describe the procedures available to the injured employee or his or her dependents. The disclosure form shall describe this section,

the range of attorney's fees customarily approved by the appeals board, and the attorney's fees provisions of Section 4064 and the extent to which an employee may receive compensation without incurring attorney's fees. The disclosure form shall include the telephone number of the administrative director together with the statement that the employee may receive answers at that number to questions concerning entitlement to compensation or the procedures to follow to receive compensation. A copy of the disclosure form shall be signed by the employee and the attorney and filed with the appeals board and sent to the employer, or insurer or third-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution thereof.

(f) The disclosure form set forth in subdivision (e) shall contain, prominently stated, the following statement:

"Any person who makes or causes to be made any knowingly false or fraudulent material statement or representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony."

(g) (1) The disclosure form described in subdivision (e) shall also contain a paragraph setting forth the exact location of the district office of the appeals board at which the employee's case will be filed. This paragraph shall also contain, prominently displayed, the following statement:

"The employee has been advised of the district office at which his or her case will be filed and that he or she may be required to attend conferences or hearings at this location at his or her own expense."

(2) The disclosure form may not be signed by the employee until he or she has been advised of the location at which his or her case will be filed, has met with or personally spoken with an attorney licensed by the State Bar of California who is regularly employed by the firm by which the employee will be represented, and has been advised of his or her rights as set forth in subdivision (e) and the provisions of paragraph (1). The name of this individual shall be clearly and legibly set forth on the disclosure form.

(3) The disclosure form shall include the actual date the disclosure form was signed by both the employee and the attorney and shall be signed under penalty of perjury by the attorney representing the employee, or an attorney licensed by the State Bar of California who is regularly employed by his or her firm. A copy of the disclosure form containing all of the required information shall be given to the employee when he or she signs the disclosure form.

(h) In addition to the disclosure form, the employee, the insurer, the employer, and the attorneys for each party shall sign under penalty of perjury and file with the board a statement, with the complete application or answer, and in addition to the disclosure required pursuant to subdivision (g), that they have not violated Section 139.3 and that they have not offered, delivered, received, or accepted any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for any referred examination or evaluation.

(i) An attorney who subsequently assumes the representation of the employee in the same action or proceeding shall complete a disclosure form that meets all of the requirements of this section and the statement required by subdivision (h). Both the form and the statement shall be signed under penalty of perjury by the attorney or an attorney licensed by the State Bar of California who is regularly employed by his or her firm. Both the disclosure form and the statement shall be filed with the appeals board and sent to the employer, or insurer or third-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution of the form and statement. Payment pursuant to subdivision (a) of Section 4903 or Section 5710 shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board and the sending of that form to the employer, or to the insurer or third-party administrator, if either is known, by the attorney.

(Amended by Stats. 2016, Ch. 852, Sec. 2. Effective January 1, 2017.)

4907. (a) The privilege of any person, except attorneys admitted to practice in the Supreme Court of the state, to appear in any proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law judges, may, after a hearing, be removed, denied, or suspended by the appeals board for either of the following:

(1) For a violation of this chapter, the Rules of the Workers' Compensation Appeals Board, or the Rules of the Administrative Director.

(2) For other good cause, including, but not limited to, failure to pay final order of sanctions, attorney's fees, or costs issued under Section 5813.

(b) For purposes of this section, nonattorney representatives shall be held to the same professional standards of conduct as attorneys.

(Amended by Stats. 2012, Ch. 363, Sec. 73. Effective January 1, 2013.)

4908. A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, has the same preference over the other debts of the employer, or his estate and of the insurer which is given by the law to claims for wages. Such preference is for the entire amount of the compensation to be paid. This section shall not impair the lien of any previous award.

(Amended by Stats. 1939, Ch. 649.)

4909. Any payment, allowance, or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit may be taken into account by the appeals board in fixing the amount of the compensation to be paid. The acceptance of any such payment, allowance, or benefit shall not operate as a waiver of any right or claim which the employee or his dependents has against the employer.

(Amended by Stats. 1965, Ch. 1513.)

4909.1. Authorized representatives of the Department of Corrections, and the Department of the Youth Authority may request the State Compensation Insurance Fund to provide any payment, allowance, or benefit as described in Section 4909. When requested by an authorized representative, the State Compensation Insurance Fund shall administer the benefits in a timely fashion.

(Added by Stats. 1988, Ch. 1233, Sec. 3.)

Chapter 2. Compromise and Release

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

5000. No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division, but nothing in this division shall:

(a) Impair the right of the parties interested to compromise, subject to the provisions herein contained, any liability which is claimed to exist under this division on account of injury or death.

(b) Confer upon the dependents of any injured employee any interest which the employee may not release by compromise or for which he, or his estate is in the event of such compromise by him accountable to dependents.

(Enacted by Stats. 1937, Ch. 90.)

5001. Compensation is the measure of the responsibility which the employer has assumed for injuries or deaths which occur to employees in his employment when subject to this division. No release of liability or compromise agreement is valid unless it is approved by the appeals board or referee.

(Amended by Stats. 1965, Ch. 1513.)

5002. A copy of the release or compromise agreement signed by both parties shall forthwith be filed with the appeals board. Upon filing with and approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award based upon the release or compromise agreement.

(Amended by Stats. 1965, Ch. 1513.)

5003. Every release or compromise agreement shall be in writing and duly executed, and the signature of the employee or other beneficiary shall be attested by two disinterested witnesses or acknowledged before a notary public. The document shall specify:

(a) The date of the accident.

(b) The average weekly wages of the employee, determined according to Chapter 1 of Part 2 of this division.

(c) The nature of the disability, whether total or partial, permanent or temporary.

(d) The amount paid, or due and unpaid, to the employee up to the date of the release or agreement or death, and the amount of the payment or benefits then or thereafter to be made.

(e) The length of time such payment or benefit is to continue.

(f) In the event a claim of lien under subdivision (f) or (g) of Section 4903 has been filed, the number of days and the amount of temporary disability indemnity which should be allowed to the lien claimant.

(Amended by Stats. 1967, Ch. 1721.)

5004. In case of death there shall also be stated in the release or compromise agreement:

(a) The date of death.

(b) The name of the widow.

(c) The names and ages of all children.

(d) The names of all other dependents.

(e) Whether the dependents are total or partial.

(f) The amount paid or to be paid as a death benefit and to whom payment is to be made.

(Enacted by Stats. 1937, Ch. 90.)

5005. In any case involving a claim of occupational disease or cumulative injury, as set forth in Section 5500.5, the employee and any employer, or any insurance carrier for any employer, may enter into a compromise and release agreement settling either all or any part of the employee's claim, including a part of his claim against any employer. Such compromise and release agreement, upon approval by the appeals board or a referee, shall be a total release as to such employer or insurance carrier for the portion or portions of the claim released, but shall not constitute a bar to a recovery from any one or all of the remaining employers or insurance carriers for the periods of exposure not so released.

In any case where a compromise and release agreement of a portion of a claim has been made and approved, the employee may elect to proceed as provided in Section 5500.5 against any one or more of the remaining employers, or against an employer for that portion of his exposure not so released; in any such proceeding after election following compromise and release, that portion of liability attributable to the portion or portions of the exposure so released shall be assessed and deducted from the liability of the remaining defendant or defendants, but any such defendant shall receive no credit for any moneys paid by way of compromise and release in excess of the liability actually assessed against the released employments and the employee shall not receive any further benefits from the released employments for any liability assessed to them above what was paid by way of compromise and release.

In approving a compromise and release agreement under this section, the appeals board or referee shall determine the adequacy of the compromise and release agreement as it shall then reflect the potential liability of the released exposure after apportionment, but need not make a final actual determination of the potential liability of the employer or employers for that portion of the exposure being released.

(Added by Stats. 1974, Ch. 1164.)

5006. A determination of facts by the appeals board under this chapter has no collateral estoppel effect on a subsequent criminal prosecution and does not preclude litigation of those same facts in the criminal proceeding.

(Added by Stats. 1995, Ch. 158, Sec. 1. Effective January 1, 1996.)

Chapter 3. Lump Sum Payments

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

5100. At the time of making its award, or at any time thereafter, the appeals board, on its own motion either upon notice, or upon application of either party with due notice to the other, may commute the compensation payable under this division to a lump sum and order it to be paid forthwith or at some future time if any of the following conditions appear:

(a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining what is in the best interest of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, the applicant's ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.

(b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.

(c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.

(d) That the employer is not a resident of this state.

(Amended by Stats. 1982, Ch. 1015, Sec. 1.)

5100.5. Notwithstanding the provisions of Section 5100, the appeals board shall not commute the compensation payable under this division to a lump sum when such compensation is payable under Section 4751 of the Labor Code.

(Amended by Stats. 1965, Ch. 1513.)

5100.6. Notwithstanding the provisions of Section 5100, the appeals board shall not permit the commutation or settlement of prospective compensation or indemnity payments or other benefits to which the employee is entitled under vocational rehabilitation.

(Amended by Stats. 1998, Ch. 524, Sec. 2. Effective January 1, 1999.)

5101. The amount of the lump sum shall be determined as follows:

(a) If the injury causes temporary disability, the appeals board shall estimate the probable duration thereof and the probable amount of the temporary disability payments therefor, in accordance with Chapter 2 of Part 2 of this division, and shall fix the lump sum at the amount so determined.

(b) If the injury causes permanent disability or death, the appeals board shall fix the total amount of the permanent disability payment or death benefit payable therefor in accordance with Chapter 2 of Part 2 of this division, and shall estimate the present value thereof, assuming interest at the rate of 3 percent per annum and disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitle the beneficiary to a life pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life pension.

(Amended by Stats. 1965, Ch. 1513.)

5102. The appeals board may order the lump sum paid directly to the injured employee or his dependents, or deposited with any savings bank or trust company authorized to transact business in this state, which agrees to accept the same as a deposit bearing interest; or the appeals board may order the lump sum deposited with the State Compensation Insurance Fund. Any lump sum so deposited, together with all interest derived therefrom, shall thereafter be held in trust for the injured employee, or in the event of his death, for his dependents. In the event of the employee's death, his dependents shall have no further recourse against the employer under this chapter.

(Amended by Stats. 1965, Ch. 1513.)

5103. Payments from the lump sum so deposited shall be made by the trustee only in the amounts and at the time fixed by order of the appeals board and until the lump sum and interest thereon are exhausted.

(Amended by Stats. 1965, Ch. 1513.)

5104. In the appointment of the trustee, preference may be given to the choice of the injured employee or his dependents.

(Enacted by Stats. 1937, Ch. 90.)

5105. Upon the payment of a lump sum, the employer shall present to the appeals board a proper receipt evidencing the same, executed either by the injured employee or his dependents, or by the trustee. The appeals board shall thereupon issue its certificate in proper form evidencing such payment. Such certificate, upon filing with the clerk of the superior court in which any judgment upon an award has been entered, operates as a satisfaction of the award and fully discharges the employer from any further liability on account thereof.

(Amended by Stats. 1965, Ch. 1513.)

5106. The appeals board shall, upon the request of the Director of Industrial Relations, where the employer is uninsured and the installments of compensation awarded are to be paid in the future, determine the present worth of the future payments, discounted at the rate of 3 percent per annum, and order the present worth paid into the Uninsured Employers Fund, which fund shall thereafter pay to the beneficiaries of the award the future payments as they become due.

(Amended by Stats. 1987, Ch. 202, Sec. 3.)

Part 3.5. Arbitration

(Part 3.5 added by Stats. 1989, Ch. 892, Sec. 44.)

5270. This part shall not apply in cases where an injured employee or dependent is involved unless the employee or dependent is represented by an attorney.

(Amended by Stats. 1990, Ch. 1550, Sec. 49.)

5270.5. (a) The presiding workers' compensation judge at each district office shall prepare a list of all eligible attorneys who apply to be placed on the list of eligible arbitrators. Attorneys are eligible to become arbitrators if they are active members of the California State Bar Association and are one of the following:

(1) A certified specialist in workers' compensation, or eligible to become certified.

(2) A retired workers' compensation judge.

(3) A retired appeals board member.

(4) An attorney who has been certified to serve as a judge pro tempore.

(b) No attorney shall be included in a panel of arbitrators, if he or she has served as a judge in any proceeding involving the same case, or has represented, or whose firm has represented, any party in the same case.

(Added by Stats. 1989, Ch. 892, Sec. 44.)

5271. (a) The parties to a dispute submitted for arbitration may select any eligible attorney from the list prepared by the presiding workers' compensation judge to serve as arbitrator. However, when the disputed issue involves insurance coverage, the parties may select any attorney as arbitrator upon agreement of the parties.

(b) If the parties cannot select an arbitrator by agreement, either party may request the presiding workers' compensation judge to assign a panel of five arbitrators selected at random from the list of eligible attorneys. No more than three arbitrators on a five-member panel may be defense attorneys, no more than three may be applicant's attorneys, and no more than two may be retired workers' compensation judges or appeals board commissioners.

(c) For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding judge shall randomly select two additional arbitrators to add to the panel. For each additional party in the capacity of employer, the presiding judge shall assign a retired workers' compensation judge or retired appeals board commissioner and an applicant's attorney. For each additional party in the capacity of injured employee or lien claimant, the presiding judge shall assign a retired workers' compensation judge or retired appeals board commissioner and a defense attorney. For each additional other party, the presiding judge shall assign two arbitrators to the panel, in order of rotation from case to case, as follows: a retired workers' compensation judge or retired appeals board commissioner, an applicant's attorney, a defense attorney.

(d) A party may petition the presiding workers' compensation judge to remove a member from the panel pursuant to Section 170.1 of the Code of Civil Procedure. The presiding workers' compensation judge shall assign another eligible attorney to replace any member removed under this subdivision.

(e) Each party or lien claimant shall strike two members from the panel, and the remaining attorney shall serve as arbitrator.

(Amended by Stats. 1990, Ch. 1550, Sec. 50.)

5272. Arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge, as

set forth in Chapter 1 (commencing with Section 5300) of Part 4, except for the following:

(a) Arbitrators shall have no power to order the injured worker to be examined by a qualified medical evaluator pursuant to Sections 5701 and 5703.5.

(b) Arbitrators shall not have power of contempt.

(Amended by Stats. 1990, Ch. 1550, Sec. 51.)

5273. (a) In disputes between an employee and an employer, the employer shall pay all costs related to the arbitration proceeding, including use of facilities, hearing reporter per diems and transcript costs.

(b) In all other disputes, the costs of the arbitration proceedings, including the arbitrator's compensation, shall be paid as follows:

(1) By the parties equally in any dispute between an employer and an insurer, or an employer and a lien claimant.

(2) By the parties equally in proceedings subject to Section 5500.5.

(3) By the dependents in accordance with their proportionate share of death benefits, where there is no dispute as to the injury causing death.

(c) Disputes regarding the costs or fees for arbitration shall be within the exclusive jurisdiction of the appeals board, and shall be determined initially by the presiding judge of the district office.

(Amended by Stats. 1990, Ch. 1550, Sec. 52.)

5275. (a) Disputes involving the following issues shall be submitted for arbitration:

(1) Insurance coverage.

(2) Right of contribution in accordance with Section 5500.5.

(b) By agreement of the parties, any issue arising under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) may be submitted for arbitration, regardless of the date of injury.

(Amended by Stats. 2002, Ch. 6, Sec. 70.5. Effective January 1, 2003.)

5276. (a) Arbitration proceedings may commence at any place and time agreed upon by all parties.

(b) If the parties cannot agree on a time or place to commence arbitration proceedings, the arbitrator shall order the date, time and place for commencement of the proceeding. Unless all parties agree otherwise, arbitration proceedings shall commence not less than 30 days nor more than 60 days from the date an arbitrator is selected.

(c) Ten days before the arbitration, each party shall submit to the arbitrator and serve on the opposing party reports, records and other documentary evidence on which that party intends to rely. If a party intends to rely upon excerpts of records or depositions, only copies of the excerpts shall be submitted to the arbitrator.

(Added by Stats. 1989, Ch. 892, Sec. 44.)

5277. (a) The arbitrator's findings and award shall be served on all parties within 30 days of submission of the case for decision.

(b) The arbitrator's award shall comply with Section 5313 and shall be filed with the appeals board office pursuant to venue rules published by the appeals board.

(c) The findings of fact, award, order, or decision of the arbitrator shall have the same force and effect as an award, order, or decision of a workers' compensation judge.

(d) Use of an arbitrator for any part of a proceeding or any issue shall not bind the parties to the use of the same arbitrator for any subsequent issues or proceedings.

(e) Unless all parties agree to a longer period of time, the failure of the arbitrator to submit the decision within 30 days shall result in forfeiture of the arbitrator's fee and shall vacate the submission order and all stipulations.

(f) The presiding workers' compensation judge may submit supplemental proceedings to arbitration pursuant to this part.

(Amended by Stats. 2006, Ch. 538, Sec. 490. Effective January 1, 2007.)

5278. (a) No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the filing of the award.

(b) Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code applies to a communication to the arbitrator or a potential arbitrator.

(Amended by Stats. 1995, Ch. 938, Sec. 75. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)

Part 4. Compensation Proceedings

(Part 4 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Jurisdiction

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

5300. All the following proceedings shall be instituted before the appeals board and not elsewhere, except as otherwise provided in Division 4:

(a) For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto.

(b) For the enforcement against the employer or an insurer of any liability for compensation imposed upon the employer by this division in favor of the injured employee, his or her dependents, or any third person.

(c) For the determination of any question as to the distribution of compensation among dependents or other persons.

(d) For the determination of any question as to who are dependents of any deceased employee, or what persons are entitled to any benefit under the compensation provisions of this division.

(e) For obtaining any order which by Division 4 the appeals board is authorized to make.

(f) For the determination of any other matter, jurisdiction over which is vested by Division 4 in the Division of Workers' Compensation, including the administrative director and the appeals board.

(Amended by Stats. 1994, Ch. 146, Sec. 152. Effective January 1, 1995.)

5301. The appeals board is vested with full power, authority and jurisdiction to try and determine finally all the matters specified in Section 5300 subject only to the review by the courts as specified in this division.

(Amended by Stats. 1965, Ch. 1513.)

5302. All orders, rules, findings, decisions, and awards of the appeals board shall be prima facie lawful and conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the appeals board or upon a review by the courts within the time and in the manner specified in this division.

(Amended by Stats. 1965, Ch. 1513.)

5303. There is but one cause of action for each injury coming within the provisions of this division. All claims brought for medical expense, disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the appeals board, be joined in the same proceeding at any time; provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific

injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death.

(Amended by Stats. 1968, 1st Ex. Sess., Ch. 4.)

5304. The appeals board has jurisdiction over any controversy relating to or arising out of Sections 4600 to 4605 inclusive, unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made between the persons or institutions rendering such treatment and the employer or insurer.

(Amended by Stats. 1965, Ch. 1513.)

5305. The Division of Workers' Compensation, including the administrative director, and the appeals board have jurisdiction over all controversies arising out of injuries suffered outside the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state. Any employee described by this section, or his or her dependents, shall be entitled to the compensation or death benefits provided by this division.

(Amended by Stats. 2002, Ch. 6, Sec. 71. Effective January 1, 2003.)

5306. The death of an employer subsequent to the sustaining of an injury by an employee shall not impair the right of the employee to proceed before the appeals board against the estate of the employer, and the failure of the employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall not in any way bar or suspend such right.

(Amended by Stats. 1965, Ch. 1513.)

5307. (a) The appeals board may, by an order signed by four members, do all of the following:

(1) Adopt reasonable and proper rules of practice and procedure.

(2) Regulate and provide the manner in which, and by whom, minors and incompetent persons are to appear and be represented before it.

(3) Regulate and prescribe the kind and character of notices, where not specifically prescribed by this division, and the service thereof.

(4) Regulate and prescribe the nature and extent of the proofs and evidence.

(b) No rule or regulation of the appeals board pursuant to this section shall be adopted, amended, or rescinded without public hearings. Any written request filed with the appeals board seeking a change in its rules or regulations shall be deemed to be denied if not set by the appeals board for public hearing to be held within six months of the date on which the request is received by the appeals board.

(Amended by Stats. 2011, Ch. 559, Sec. 11. Effective October 7, 2011.)

5307.1. (a) (1) The administrative director, after public hearings, shall adopt and revise periodically an official medical fee schedule that shall establish reasonable maximum fees paid for medical services other than physician services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods described in Section 4600 and provided pursuant to this section. Except for physician services, all fees shall be in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems, provided that employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration, shall be determined in accordance with Section 4600. Commencing January 1, 2004, and continuing until the time the administrative director has adopted an official medical fee schedule in accordance with the fee-related structure and rules of the relevant Medicare payment systems, except for the components listed in subdivision (j), maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (g), except that for pharmacy services and drugs that are not otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100 percent of fees prescribed in the relevant Medi-Cal payment system. Upon adoption by the administrative director of an official medical fee schedule pursuant to this section, the maximum reasonable fees paid shall not exceed 120 percent of estimated aggregate fees prescribed in the Medicare payment system for the same class of services before application of the inflation factors provided in subdivision (g). Pharmacy services and drugs shall be subject to the requirements of this section, whether furnished through a pharmacy or dispensed directly by the practitioner pursuant to subdivision (b) of Section 4024 of the Business and Professions Code.

(2) (A) The administrative director, after public hearings, shall adopt and review periodically an official medical fee schedule based on the resource-based relative value scale for physician services and nonphysician practitioner services, as defined by the administrative director, provided that all of the following apply:

(i) Employer liability for medical treatment, including issues of reasonableness, necessity, frequency, and duration, shall be determined in accordance with Section 4600.

(ii) The fee schedule is updated annually to reflect changes in procedure codes, relative weights, and the adjustment factor provided in subdivision (g).

(iii) The maximum reasonable fees paid shall not exceed 120 percent of estimated annualized aggregate fees prescribed in the Medicare payment system for physician services as it appeared on July 1, 2012, before application of the adjustment factor provided in subdivision (g). For purposes of calculating maximum reasonable fees, any service provided to injured workers that is not covered under the federal Medicare program shall be included at its rate of payment established by the administrative director pursuant to subdivision (d).

(iv) There shall be a four-year transition between the estimated aggregate maximum allowable amount under the official medical fee schedule for physician services prior to January 1, 2014, and the maximum allowable amount based on the resource-based relative value scale at 120 percent of the Medicare conversion factors as adjusted pursuant to this section.

(B) The official medical fee schedule shall include payment ground rules that differ from Medicare payment ground rules, including, as appropriate, payment of consultation codes and payment evaluation and management services provided during a global period of surgery.

(C) Commencing January 1, 2014, and continuing until the time the administrative director has adopted an official medical fee schedule in accordance with the resource-based relative value scale, the maximum reasonable fees for physician services and nonphysician practitioner services, including, but not limited to, physician assistant, nurse practitioner, and physical therapist services, shall be in accordance with the fee-related structure and rules of the Medicare payment system for physician services and nonphysician practitioner services, except that an average statewide geographic adjustment factor of 1.078 shall apply in lieu of Medicare's locality-specific geographic adjustment factors, and shall incorporate the following conversion factors:

(i) For dates of service in 2014, forty-nine dollars and five thousand three hundred thirteen ten thousandths cents ($49.5313) for surgery, fifty-six dollars and two thousand three hundred twenty-nine ten thousandths cents ($56.2329) for radiology, thirty dollars and six hundred forty-seven ten thousandths cents ($30.0647) for anesthesia, and thirty-seven dollars and one thousand seven hundred twelve ten thousandths cents ($37.1712) for all other before application of the adjustment factor provided in subdivision (g).

(ii) For dates of service in 2015, forty-six dollars and six thousand three hundred fifty-nine ten thousandths cents ($46.6359) for surgery, fifty-one dollars and one thousand thirty-six ten thousandths cents ($51.1036) for radiology, twenty-eight dollars and six thousand sixty-seven ten thousandths cents ($28.6067) for anesthesia, and thirty-eight dollars and three thousand nine hundred fifty-eight ten thousandths cents ($38.3958) for all other before application of the adjustment factor provided in subdivision (g).

(iii) For dates of service in 2016, forty-three dollars and seven thousand four hundred five ten thousandths cents ($43.7405) for surgery, forty-five dollars and nine thousand seven hundred forty-four ten thousandths cents ($45.9744) for radiology, twenty-seven dollars and one thousand four hundred eighty-seven thousandths cents ($27.1487) for anesthesia, and thirty-nine dollars and six thousand two hundred five ten thousandths cents ($39.6205) for all other before application of the adjustment factor provided in subdivision (g).

(iv) For dates of service on or after January 1, 2017, 120 percent of the 2012 Medicare conversion factor as updated pursuant to subdivision (g).

(b) In order to comply with the standards specified in subdivision (f), the administrative director may adopt different conversion factors, diagnostic-related group weights, and other factors affecting payment amounts from those used in the Medicare payment system, provided estimated aggregate fees do not exceed 120 percent of the estimated aggregate fees paid for the same class of services in the relevant Medicare payment system.

(c) (1) Notwithstanding subdivisions (a) and (d), the maximum facility fee for services performed in a hospital outpatient department, shall not exceed 120 percent of the fee paid by Medicare for the same services performed in a hospital outpatient department, and the maximum facility fee for services performed in an ambulatory surgical center shall not exceed 80 percent of the fee paid by Medicare for the same services performed in a hospital outpatient department.

(2) The department shall study the feasibility of establishing a facility fee for services that are performed in an ambulatory surgical center and are not subject to a fee paid by Medicare for services performed in an outpatient department, set at 85 percent of the diagnostic-related group (DRG) fee paid by Medicare for the same services performed in a hospital inpatient department. The department shall report the finding to the Senate Labor Committee and Assembly Insurance Committee no later than July 1, 2013.

(d) If the administrative director determines that a medical treatment, facility use, product, or service is not covered by a Medicare payment system, the administrative director shall establish maximum fees for that item, provided that the maximum fee paid shall not exceed 120 percent of the fees paid by Medicare for services that require comparable resources. If the administrative director determines that a pharmacy service or drug is not covered by a Medi-Cal payment system, the administrative director shall establish maximum fees for that item. However, the maximum fee paid shall not exceed 100 percent of the fees paid by Medi-Cal for pharmacy services or drugs that require comparable resources.

(e) (1) Prior to the adoption by the administrative director of a medical fee schedule pursuant to this section, for any treatment, facility use, product, or service not covered by a Medicare payment system, including acupuncture services, the maximum reasonable fee paid shall not exceed the fee specified in the official medical fee schedule in effect on December 31, 2003, except as otherwise provided in this subdivision.

(2) Any compounded drug product shall be billed by the compounding pharmacy or dispensing physician at the ingredient level, with each ingredient identified using the applicable National Drug Code (NDC) of the ingredient and the corresponding quantity, and in accordance with regulations adopted by the California State Board of Pharmacy. Ingredients with no NDC shall not be separately reimbursable. The ingredient-level reimbursement shall be equal to 100 percent of the reimbursement allowed by the Medi-Cal payment system and payment shall be based on the sum of the allowable fee for each ingredient plus a dispensing fee equal to the dispensing fee allowed by the Medi-Cal payment systems. If the compounded drug product is dispensed by a physician, the maximum reimbursement shall not exceed 300 percent of documented paid costs, but in no case more than twenty dollars ($20) above documented paid costs.

(3) For a dangerous drug dispensed by a physician that is a finished drug product approved by the federal Food and Drug Administration, the maximum reimbursement shall be according to the official medical fee schedule adopted by the administrative director.

(4) For a dangerous device dispensed by a physician, the reimbursement to the physician shall not exceed either of the following:

(A) The amount allowed for the device pursuant to the official medical fee schedule adopted by the administrative director.

(B) One hundred twenty percent of the documented paid cost, but not less than 100 percent of the documented paid cost plus the minimum dispensing fee allowed for dispensing prescription drugs pursuant to the official medical fee schedule adopted by the administrative director, and not more than 100 percent of the documented paid cost plus two hundred fifty dollars ($250).

(5) For any pharmacy goods dispensed by a physician not subject to paragraph (2), (3), or (4), the maximum reimbursement to a physician for pharmacy goods dispensed by the physician shall not exceed any of the following:

(A) The amount allowed for the pharmacy goods pursuant to the official medical fee schedule adopted by the administrative director or pursuant to paragraph (2), as applicable.

(B) One hundred twenty percent of the documented paid cost to the physician.

(C) One hundred percent of the documented paid cost to the physician plus two hundred fifty dollars ($250).

(6) For the purposes of this subdivision, the following definitions apply:

(A) "Administer" or "administered" has the meaning defined by Section 4016 of the Business and Professions Code.

(B) "Compounded drug product" means any drug product subject to Article 4.5 (commencing with Section 1735) of Division 17 of Title 16 of the California Code of Regulations or other

regulation adopted by the State Board of Pharmacy to govern the practice of compounding.

(C) "Dispensed" means furnished to or for a patient as contemplated by Section 4024 of the Business and Professions Code and does not include "administered."

(D) "Dangerous drug" and "dangerous device" have the meanings defined by Section 4022 of the Business and Professions Code.

(E) "Documented paid cost" means the unit price paid for the specific product or for each component used in the product as documented by invoices, proof of payment, and inventory records as applicable, or as documented in accordance with regulations that may be adopted by the administrative director, net of rebates, discounts, and any other immediate or anticipated cost adjustments.

(F) "Pharmacy goods" has the same meaning as set forth in Section 139.3.

(7) To the extent that any provision of paragraphs (2) to (6), inclusive, is inconsistent with any provision of the official medical fee schedule adopted by the administrative director on or after January 1, 2012, the provision adopted by the administrative director shall govern.

(8) Notwithstanding paragraph (7), the provisions of this subdivision concerning physician-dispensed pharmacy goods shall not be superseded by any provision of the official medical fee schedule adopted by the administrative director unless the relevant official medical fee schedule provision is expressly applicable to physician-dispensed pharmacy goods.

(f) Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.

(g) (1) (A) Notwithstanding any other law, the official medical fee schedule shall be adjusted to conform to any relevant changes in the Medicare and Medi-Cal payment systems no later than 60 days after the effective date of those changes, subject to the following provisions:

(i) The annual inflation adjustment for facility fees for inpatient hospital services provided by acute care hospitals and for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for the 12 months beginning October 1 of the preceding calendar year.

(ii) The annual update in the operating standardized amount and capital standard rate for inpatient hospital services provided by hospitals excluded from the Medicare prospective payment system for acute care hospitals and the conversion factor for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for excluded hospitals for the 12 months beginning October 1 of the preceding calendar year.

(iii) The annual adjustment factor for physician services shall be based on the product of one plus the percentage change in the Medicare Economic Index and any relative value scale adjustment factor.

(B) The update factors contained in clauses (i) and (ii) of subparagraph (A) shall be applied beginning with the first update in the Medicare fee schedule payment amounts after December 31, 2003, and the adjustment factor in clause (iii) of subparagraph (A) shall be applied beginning with the first update in the Medicare fee schedule payment amounts after December 31, 2012.

(C) The maximum reasonable fees paid for pharmacy services and drugs shall not include any reductions in the relevant Medi-Cal payment system implemented pursuant to Section 14105.192 of the Welfare and Institutions Code.

(2) The administrative director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the Division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) "Medicare Economic Index" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of a providing physician and other services paid under the resource-based relative value scale.

(B) "Hospital market basket" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.

(C) "Hospital market basket for excluded hospitals" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.

(D) "Relative value scale adjustment factor" means the annual factor applied by the federal Centers for Medicare and Medicaid Services to the Medicare conversion factor to make changes in relative value units for the physician fee schedule budget neutral.

(h) This section does not prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(j) The following Medicare payment system components shall not become part of the official medical fee schedule until January 1, 2005:

(1) Inpatient skilled nursing facility care.

(2) Home health agency services.

(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.

(4) Outpatient renal dialysis services.

(k) Except as revised by the administrative director, the official medical fee schedule rates for physician services in effect on December 31, 2012, shall remain in effect until January 1, 2014.

(l) Notwithstanding subdivision (a), any explicit reductions in the Medi-Cal fee schedule for pharmacy services and drugs to meet the budgetary targets provided in Section 14105.192 of the Welfare and Institutions Code shall not be reflected in the official medical fee schedule.

(m) On or before July 1, 2013, the administrative director shall adopt a regulation specifying an additional reimbursement for MS-DRGs Medicare Severity Diagnostic Related Groups (MS-DRGs) 028, 029, 030, 453, 454, 455, and 456 to ensure that the aggregate reimbursement is sufficient to cover costs, including the implantable medical device, hardware, and instrumentation.

This regulation shall be repealed as of January 1, 2014, unless extended by the administrative director.

(Amended by Stats. 2012, Ch. 363, Sec. 74. Effective January 1, 2013.)

5307.11. A health care provider or health facility licensed pursuant to Section 1250 of the Health and Safety Code, and a contracting agent, employer, or carrier may contract for reimbursement rates different from those in the fee schedule adopted and revised pursuant to Section 5307.1. When a health care provider or health facility licensed pursuant to Section 1250 of the Health and Safety Code, and a contracting agent, employer, or carrier contract for reimbursement rates different from those in the fee schedule, the medical fee schedule for that health care provider or health facility licensed pursuant to Section 1250 of the Health and Safety Code shall not apply to the contracted reimbursement rates. Except as provided in subdivision (b) of Section 5307.1, the official medical fee schedule shall establish maximum reimbursement rates for all medical services for injuries subject to this division provided by a health care provider or health care facility licensed pursuant to Section 1250 of the Health and Safety Code other than those specified in contracts subject to this section.

(Added by Stats. 2001, Ch. 252, Sec. 1. Effective January 1, 2002.)

5307.2. The administrative director shall contract with an independent consulting firm, to the extent permitted by state law, to perform an annual study of access to medical treatment for injured workers. The study shall analyze whether there is adequate access to quality health care and products, including prescription drugs and pharmacy services, for injured workers and make recommendations to ensure continued access. If the administrative director determines, based on this study, that there is insufficient access to quality health care or products for injured workers, including access to prescription drugs and pharmacy services, the administrative director may make appropriate adjustments to medical, prescription drugs and pharmacy services, and facilities' fees. When there has been a determination that substantial access problems exist, the administrative director may, in accordance with the notification and hearing requirements of Section 5307.1, adopt fees in excess of 120 percent of the applicable Medicare payment system fee, or in excess of 100 percent of the fees prescribed in the relevant Medi-Cal payment system, for the applicable services or products.

(Amended by Stats. 2008, Ch. 193, Sec. 1. Effective January 1, 2009.)

5307.27. (a) The administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a medical treatment utilization schedule, that shall incorporate the evidence-based, peer-reviewed, nationally recognized standards of care recommended by the commission pursuant to Section 77.5, and that shall address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases. Evidence-based updates to the utilization schedule shall be made through an order exempt from Sections 5307.3 and 5307.4, and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), but the administrative director shall allow at least a 30-day period for public comment and a public hearing. The administrative director shall provide responses to submitted comments prior to the effective date of the updates. All orders issued pursuant to this subdivision shall be published on the Internet Web site of the Division of Workers' Compensation.

(b) On or before July 1, 2017, the medical treatment utilization schedule adopted by the administrative director shall include a drug formulary using evidence-based medicine. Nothing in this section shall prohibit the authorization of medications that are not in the formulary when the variance is demonstrated, consistent with subdivision (a) of Section 4604.5.

(c) The drug formulary shall include a phased implementation for workers injured prior to July 1, 2017, in order to ensure injured workers safely transition to medications pursuant to the formulary.

(d) This section shall apply to all prescribers and dispensers of medications serving injured workers under the workers' compensation system.

(Amended by Stats. 2016, Ch. 868, Sec. 10. Effective January 1, 2017.)

5307.28. (a) Prior to the adoption of a drug formulary as required by Section 5307.27, the administrative director shall meet and consult regarding the establishment of a formulary with stakeholders, including, but not limited to, employers, insurers, private sector employee representatives, public sector employee representatives, treating physicians actively practicing medicine, pharmacists, pharmacy benefit managers, attorneys who represent applicants, and injured workers.

(b) Commencing July 1, 2016, and concluding with the implementation of the formulary, the administrative director shall publish at least two interim reports on the Internet Web site of the Division of Workers' Compensation describing the status of the creation of the formulary.

(Added by Stats. 2015, Ch. 525, Sec. 5. Effective January 1, 2016.)

5307.29. (a) The administrative director shall make provision for no less than quarterly updates to the drug formulary to allow for the provision of all appropriate medications, including those new to the market.

(b) Changes made to the list of drugs in the drug formulary described in Section 5307.27 shall be made through an order exempt from Sections 5307.3 and 5307.4, and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this subdivision shall be published on the Internet Web site of the Division of Workers' Compensation.

(c) The administrative director shall establish an independent pharmacy and therapeutics committee to review and consult with the administrative director on available evidence of the relative safety, efficacy, and effectiveness of drugs within a class of drugs in the updating of an evidence-based drug formulary, as required by Section 5307.27.

(1) The committee shall consist of six members and the Executive Medical Director of the Division of Workers' Compensation. The committee shall consist of medical doctors or doctors of osteopathy holding a physician and surgeon license pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and pharmacists licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code. A committee member shall have knowledge or expertise in one or more of the following:

(A) Clinically appropriate prescribing of covered drugs.

(B) Clinically appropriate dispensing and monitoring of covered drugs.

(C) Drug use review.

(D) Evidence-based medicine.

(2) Committee members shall not be employed by a pharmaceutical manufacturer, a pharmacy benefits management company, or a company engaged in the development of a pharmaceutical formulary for commercial sale during his or her term, and shall not have been so employed for 12 months prior to his or her appointment.

(3) A committee member shall not have a substantial financial conflict of interest pursuant to standards established by the administrative director. The administrative director may, in his or her sole discretion, disqualify a potential or current member of the committee if the administrative director determines that a substantial conflict of interest exists.

(4) A committee member shall agree to keep all proprietary information confidential to the extent required by existing law.

(Added by Stats. 2015, Ch. 525, Sec. 6. Effective January 1, 2016.)

5307.3. The administrative director may adopt, amend, or repeal any rules and regulations that are reasonably necessary to enforce this division, except where this power is specifically reserved to the appeals board.

No rule or regulation of the administrative director pursuant to this section shall be adopted, amended, or rescinded without public hearings. Any written request filed with the administrative director seeking a change in its rules or regulations shall be deemed to be denied if not set by the administrative director for public hearing to be held within six months of the date on which the request is received by the administrative director.

(Amended by Stats. 2011, Ch. 559, Sec. 12. Effective October 7, 2011.)

5307.4. (a) Public hearings required under Sections 5307 and 5307.3 shall be subject to the provisions of this section except to the extent that there is involved a matter relating to the management, or to personnel, or to public property, loans, grants, benefits, or to contracts, of the appeals board or the administrative director.

(b) Notice of the rule or regulation proposed to be adopted, amended, or rescinded, shall be given to such business and labor organizations and firms or individuals who have requested notice thereof. The notice shall include all of the following:

(1) A statement of the time, place, and nature of the public hearings.

(2) Reference to the legal authority under which the rule is proposed.

(3) Either the terms or substance of the proposed rule, or a description of the subjects and the issues involved.

(c) Except where the proposed rule or regulation has a significant impact on the public, this section shall not apply to interpretive rules, general statements of policy, or rules of agency organization.

(d) After notice required by this section, the appeals board or the administrative director shall give interested persons the opportunity to participate in the rulemaking through submission of written data, views, or arguments, with opportunity for oral presentation. If, after consideration of the relevant matter presented, the appeals board or the administrative director adopts a rule, it or he shall publish a concise, general statement of reasons for the adoption of the rule. The rule and statement of reasons shall be given to the same individuals and organizations who have requested notice of hearings.

(e) The notice required under this section shall be made not less than 30 days prior to the public hearing date.

(Added by Stats. 1977, Ch. 517.)

5307.5. The appeals board or a workers' compensation judge may:

(a) Appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent upon the terms and conditions which it deems proper. The guardian or trustee shall, if required by the appeals board, give a bond in the form and of the character required by law from a guardian appointed by a superior court and in the amount which the appeals board determines. The bond shall be approved by the appeals board, and the guardian or trustee shall not be discharged from liability until he or she files an account with the appeals board or with the superior court and the account is approved. The trustee or guardian shall receive the compensation for his or her services fixed and allowed by the appeals board or by the superior court.

(b) Provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, or otherwise.

(Amended by Stats. 1985, Ch. 326, Sec. 13.)

5307.6. (a) The administrative director shall adopt and revise a fee schedule for medical-legal expenses as defined by Section 4620, which shall be prima facie evidence of the reasonableness of fees charged for medical-legal expenses at the same time he or she adopts and revises the medical fee schedule pursuant to Section 5307.1.

The schedule shall consist of a series of procedure codes, relative values, and a conversion factor producing fees which provide remuneration to physicians performing medical-legal evaluations at a level equivalent to that provided to physicians for reasonably comparable work, and which additionally recognizes the relative complexity of various types of evaluations, the amount of time spent by the physician in direct contact with the patient, and the need to prepare a written report.

(b) A provider shall not be paid fees in excess of those set forth in the fee schedule established under this section unless the provider provides an itemization and explanation of the fee that shows that it is both a reasonable fee and that extraordinary circumstances relating to the medical condition being evaluated justify a higher fee; provided, however, that in no event shall a provider charge in excess of his or her usual fee. The employer and employee shall have standing to contest fees in excess of those set forth in the fee schedule.

(c) In the event of a dispute between the provider and the employer, employee, or carrier concerning the fees charged, the provider may be allowed a reasonable fee for testimony if the provider testified pursuant to the employer's or carrier's subpoena and the judge or referee determines that the fee charged was reasonable and justified by extraordinary circumstances.

(d) (1) No provider may request nor accept any compensation, including, but not limited to, any kind of remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, from any source for medical-legal expenses if such compensation is in addition to the fees authorized by this section. In addition to being subject to discipline pursuant to the provisions of subdivision (k) of Section 139.2, any provider violating this subdivision is subject to disciplinary action by the appropriate licensing board.

(2) This subdivision does not apply to medical-legal expenses for which the administrative director has not adopted a fee schedule.

(Amended by Stats. 1993, Ch. 1242, Sec. 38. Effective January 1, 1994.)

5307.7. (a) On or before January 1, 2013, the administrative director shall adopt, after public hearings, a fee schedule that shall establish reasonable fees paid for services provided by vocational experts, including, but not limited to, vocational evaluations

and expert testimony determined to be reasonable, actual, and necessary by the appeals board.

(b) A vocational expert shall not be paid, and the appeals board shall not allow, vocational expert fees in excess of those that are reasonable, actual, and necessary, or that are not consistent with the fee schedule adopted by the administrative director.

(Amended by Stats. 2012, Ch. 363, Sec. 75. Effective January 1, 2013.)

5307.8. (a) Notwithstanding Section 5307.1, the administrative director shall adopt, after public hearings, a schedule for payment of home health care services provided in accordance with Section 4600 that are not covered by a Medicare fee schedule and are not otherwise covered by the official medical fee schedule adopted pursuant to Section 5307.1. The schedule shall set forth fees and requirements for service providers, and may be based upon, but is not limited to, being based upon, either of the following:

(1) The maximum service hours and fees as set forth in regulations adopted pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) A state or federal home health care services fee schedule other than the schedule described in paragraph (1), including a fee schedule authorized for purposes of the Medi-Cal program or a fee schedule administered by the federal Office of Workers' Compensation Programs.

(b) Fees shall not be provided for any services, including any services provided by a member of the employee's household, to the extent the services had been regularly performed in the same manner and to the same degree prior to the date of injury. If appropriate, attorney's fees for recovery of home health care services fees under this section may be awarded in accordance with Section 4906 and any applicable rules or regulations.

(Amended by Stats. 2015, Ch. 542, Sec. 5. Effective January 1, 2016.)

5307.9. On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(Added by Stats. 2012, Ch. 363, Sec. 77. Effective January 1, 2013.)

5308. The appeals board has jurisdiction to determine controversies arising out of insurance policies issued to self-employing persons, conferring benefits identical with those prescribed by this division.

The appeals board may try and determine matters referred to it by the parties under the provisions of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, with respect to controversies arising out of insurance issued to self-employing persons under the provisions of this division. Such controversies may be submitted to it by the signed agreement of the parties, or by the application of one party and the submission of the other to its jurisdiction, with or without an express request for arbitration.

The State Compensation Insurance Fund, when the consent of the other party is obtained, shall submit to the appeals board all controversies susceptible of being arbitrated under this section.

In acting as arbitrator under this section, the appeals board has all the powers which it may lawfully exercise in compensation cases, and its findings and award upon such arbitration have the same conclusiveness and are subject to the same mode of reopening, review, and enforcement as in compensation cases. No fee or cost shall be charged by the appeals board for arbitrating the issues presented under this section.

(Amended by Stats. 1967, Ch. 125.)

5309. The appeals board may, in accordance with rules of practice and procedure which it shall adopt and upon the agreement of the parties, on the application of either, or of its own motion, and with or without notice, direct and order a workers' compensation judge:

(a) To try the issues in any proceeding before it, whether of fact or of law, and make and file a finding, order, decision, or award based thereon.

(b) To hold hearings and ascertain facts necessary to enable the appeals board to determine any proceeding or to make any order, decision, or award that the appeals board is authorized to make under Divisions 4 or 5, or necessary for the information of the appeals board.

(c) To issue writs or summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for direct and hybrid contempt in a like manner and to the same extent as courts of record. For the purposes of this section, "hybrid contempt" means a charge of contempt which arises from events occurring in the immediate presence of the workers' compensation judge for reasons which occur outside the presence of the workers' compensation judge.

(Amended by Stats. 1988, Ch. 222, Sec. 1.)

5310. The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim. The administrative director may appoint workers' compensation administrative law judges. Any workers' compensation administrative law judge appointed by the administrative director has the powers, jurisdiction, and authority granted by law, by the order of appointment, and by the rules of the appeals board.

(Amended by Stats. 2011, Ch. 559, Sec. 13. Effective October 7, 2011.)

5311. Any party to the proceeding may object to the reference of the proceeding to a particular workers' compensation judge upon any one or more of the grounds specified in Section 641 of the Code of Civil Procedure and the objection shall be heard and disposed of by the appeals board. Affidavits may be read and witnesses examined as to the objections.

(Amended by Stats. 1985, Ch. 326, Sec. 16.)

5311.5. The administrative director shall require all workers' compensation administrative law judges to participate in continuing education to further their abilities as workers' compensation administrative law judges, including courses in ethics and conflict of interest. The director may coordinate the

requirements with those imposed upon attorneys by the State Bar in order that the requirements may be consistent.

(Amended by Stats. 2011, Ch. 559, Sec. 14. Effective October 7, 2011.)

5312. Before entering upon his or her duties, the workers' compensation judge shall be sworn, before an officer authorized to administer oaths, faithfully and fairly to hear and determine the matters and issues referred to him or her, to make just findings and to report according to his or her understanding.

(Amended by Stats. 1985, Ch. 326, Sec. 17.)

5313. The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Amended by Stats. 1985, Ch. 326, Sec. 18.)

5315. Within 60 days after the filing of the findings, decision, order or award, the appeals board may confirm, adopt, modify or set aside the findings, order, decision, or award of a workers' compensation judge and may, with or without further proceedings, and with or without notice, enter its order, findings, decision, or award based upon the record in the case.

(Amended by Stats. 1985, Ch. 326, Sec. 19.)

5316. Any notice, order, or decision required by this division to be served upon any person either before, during, or after the institution of any proceeding before the appeals board, may be served in the manner provided by Chapter 5, Title 14 of Part 2 of the Code of Civil Procedure, unless otherwise directed by the appeals board. In the latter event the document shall be served in accordance with the order or direction of the appeals board. The appeals board may, in the cases mentioned in the Code of Civil Procedure, order service to be made by publication of notice of time and place of hearing. Where service is ordered to be made by publication the date of the hearing may be fixed at more than 30 days from the date of filing the application.

(Amended by Stats. 1965, Ch. 1513.)

5317. Any such notice, order or decision affecting the State or any county, city, school district, or public corporation therein, shall be served upon the person upon whom the service of similar notices, orders, or decisions is authorized by law.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 2. Limitations of Proceedings

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

5400. Except as provided by sections 5402 and 5403, no claim to recover compensation under this division shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, there is served upon the employer notice in writing, signed by the person injured or someone in his behalf, or in case of the death of the person injured, by a dependent or someone in the dependent's behalf.

(Enacted by Stats. 1937, Ch. 90.)

5401. (a) Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, which injury results in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid, the employer shall provide, personally or by first-class mail, a claim form and a notice of potential eligibility for benefits under this division to the injured employee, or in the case of death, to his or her dependents. As used in this subdivision, "first aid" means any one-time treatment, and any followup visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care. This one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel. "Minor industrial injury" shall not include serious exposure to a hazardous substance as defined in subdivision (i) of Section 6302. The claim form shall request the injured employee's name and address, social security number, the time and address where the injury occurred, and the nature of and part of the body affected by the injury. Claim forms shall be available at district offices of the Employment Development Department and the division. Claim forms may be made available to the employee from any other source.

(b) Insofar as practicable, the notice of potential eligibility for benefits required by this section and the claim form shall be a single document and shall instruct the injured employee to fully read the notice of potential eligibility. The form and content of the notice and claim form shall be prescribed by the administrative director after consultation with the Commission on Health and Safety and Workers' Compensation. The notice shall be easily understandable and available in both English and Spanish. The content shall include, but not be limited to, the following:

(1) The procedure to be used to commence proceedings for the collection of compensation for the purposes of this chapter.

(2) A description of the different types of workers' compensation benefits.

(3) What happens to the claim form after it is filed.

(4) From whom the employee can obtain medical care for the injury.

(5) The role and function of the primary treating physician.

(6) The rights of an employee to select and change the treating physician pursuant to subdivision (e) of Section 3550 and Section 4600.

(7) How to get medical care while the claim is pending.

(8) The protections against discrimination provided pursuant to Section 132a.

(9) The following written statements:

(A) You have a right to disagree with decisions affecting your claim.

(B) To obtain important information about the workers' compensation claims process and your rights and obligations, go to [applicable Internet Web site(s)], or contact an information and assistance (I&A) officer of the state Division of Workers' Compensation. You can also hear recorded information and a list of local I&A offices by calling [applicable information and assistance telephone number(s)].

(C) You can consult an attorney. Most attorneys offer one free consultation. If you decide to hire an attorney, his or her fee will be taken out of some of your benefits. For names of workers' compensation attorneys, call the State Bar of California at [telephone number of the State Bar of California's legal specialization program, or its equivalent].

(c) The completed claim form shall be filed with the employer by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent. Except as provided in subdivision (d), a claim form is deemed filed when it is personally delivered to the employer or received by the employer by first-class or certified mail. A dated copy of the completed form shall be provided by the employer to

the employer's insurer and to the employee, dependent, or agent who filed the claim form.

(d) The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (d) of Section 4650, or prior to the injured employee's request for a medical evaluation under Section 4060, 4061, or 4062. Filing of the claim form with the employer shall toll, for injuries occurring on or after January 1, 1994, the time limitations set forth in Sections 5405 and 5406 until the claim is denied by the employer or the injury becomes presumptively compensable pursuant to Section 5402. For purposes of this subdivision, a claim form is deemed filed when it is personally delivered to the employer or mailed to the employer by first-class or certified mail.

(Amended by Stats. 2011, Ch. 544, Sec. 6. Effective January 1, 2012.)

5401.7. The claim form shall contain, prominently stated, the following statement:

"Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony."

The statements required to be printed or displayed pursuant to Sections 1871.2 and 1879.2 of the Insurance Code may, but are not required to, appear on the claim form.

(Amended by Stats. 1997, Ch. 346, Sec. 4. Effective January 1, 1998.)

5402. (a) Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.

(b) If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.

(c) Within one working day after an employee files a claim form under Section 5401, the employer shall authorize the provision of all treatment, consistent with Section 5307.27, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars ($10,000).

(d) Treatment provided under subdivision (c) shall not give rise to a presumption of liability on the part of the employer.

(Amended by Stats. 2012, Ch. 363, Sec. 79. Effective January 1, 2013.)

5403. The failure to give notice under section 5400, or any defect or inaccuracy in a notice is not a bar to recovery under this division if it is found as a fact in the proceedings for the collection of the claim that the employer was not in fact misled or prejudiced by such failure.

(Enacted by Stats. 1937, Ch. 90.)

5404. Unless compensation is paid within the time limited in this chapter for the institution of proceedings for its collection, the right to institute such proceedings is barred. The timely filing of an application with the appeals board by any party in interest for any part of the compensation defined by Section 3207 renders this chapter inoperative as to all further claims by such party against the defendants therein named for compensation arising from that injury, and the right to present such further claims is governed by Sections 5803 to 5805, inclusive.

(Amended by Stats. 1965, Ch. 1513.)

5404.5. (a) Where a claim form has been filed prior to January 1, 1994, and where the claim is denied by the employer, the claim may be dismissed if there has been no activity for the previous 180 days and if the claims adjuster has served notice pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of the Code of Civil Procedure. The notice shall specify that the claim will be dismissed by operation of law unless an application for adjudication of the claim is filed within 180 days of service of the notice.

(b) Where a claim form has been filed prior to January 1, 1994, and where benefits have been furnished by the employer, the claim may be dismissed if there has been no activity for the previous 180 days and if the claims adjuster has served notice pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of the Code of Civil Procedure. The notice shall specify that the claim will be dismissed by operation of law unless an application for adjudication of the claim is filed within five years of the date of injury or within one year of the last furnishing of benefits, whichever is later.

(c) The administrative director may adopt rules of practice and procedure consistent with this section.

(d) The provisions of subdivisions (a) and (b) do not limit the jurisdiction of the appeals board.

(e) This section is applicable to injuries occurring before January 1, 1994.

(Amended by Stats. 1993, Ch. 1242, Sec. 40. Effective January 1, 1994.)

5405. The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:

(a) The date of injury.

(b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.

(c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

(Amended by Stats. 2002, Ch. 6, Sec. 78. Effective January 1, 2003.)

5406. (a) Except as provided in Section 5406.5, 5406.6, or 5406.7, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from:

(1) The date of death if death occurs within one year from date of injury.

(2) The date of last furnishing of any benefits under Chapter 2 (commencing with Section 4550) of Part 2, if death occurs more than one year from the date of injury.

(3) The date of death, if death occurs more than one year after the date of injury and compensation benefits have been furnished.

(b) Proceedings shall not be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.

(Amended by Stats. 2015, Ch. 303, Sec. 378. Effective January 1, 2016.)

5406.5. In the case of the death of an asbestos worker or firefighter from asbestosis, the period within which proceedings may be commenced for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death.

(Amended by Stats. 2003, Ch. 831, Sec. 1. Effective January 1, 2004.)

5406.6. (a) In the case of the death of a health care worker, a worker described in Section 3212, or a worker described in Section

830.5 of the Penal Code from an HIV-related disease, the period within which proceedings may be commenced for the collection of benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from the date of death, providing that one or more of the following events has occurred:

(1) A report of the injury or exposure was made to the employer or to a governmental agency authorized to administer industrial injury claims, within one year of the date of the injury.

(2) The worker has complied with the notice provisions of this chapter and the claim has not been finally determined to be noncompensable.

(3) The employer provided, or was ordered to provide, workers' compensation benefits for the injury prior to the date of death.

(b) For the purposes of this section, "health care worker" means an employee who has direct contact, in the course of his or her employment, with blood or other bodily fluids contaminated with blood, or with other bodily fluids identified by the Division of Occupational Safety and Health as capable of transmitting HIV, who is either (1) any person who is an employee of a provider of health care, as defined in Section 56.05 of the Civil Code, including, but not limited to, a registered nurse, licensed vocational nurse, certified nurse aide, clinical laboratory technologist, dental hygienist, physician, janitor, or housekeeping worker, or (2) an employee who provides direct patient care.

(Amended by Stats. 2013, Ch. 444, Sec. 21. Effective January 1, 2014.)

5406.7. (a) In addition to the timelines established pursuant to Section 5406, proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 may be commenced after 240 weeks from the date of injury and no later than 420 weeks from the date of injury, but in no event more than one year after the date of death, if all of the following criteria are met:

(1) The proceedings are brought for the collection of benefits by, or on behalf of, a person who was a dependent on the date of death. The extent of dependency shall be determined in accordance with the facts as they existed at the time of death of the employee.

(2) The injury causing death is one of the following:

(A) An injury as defined in Section 3212.1 to a person described in Section 3212.1.

(B) An injury as defined in Section 3212.6 to a person described in Section 3212.6.

(C) An injury as defined in Section 3212.8 to a person described in Section 3212.8.

(3) The date of injury is during the person's active service in applicable capacities described in Section 3212.1, 3212.6, or 3212.8.

(b) This section does not apply to claims for the collection of benefits pursuant to Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 that have already been adjudicated, or otherwise finalized, or for which the commencement period lapsed on or before December 31, 2014.

(c) No dependency death benefit shall be payable pursuant to proceedings commenced more than 240 weeks from the date of injury unless either no proceedings were commenced within 240 weeks from the date of injury, or, if proceedings were commenced within that period, it has been finally determined that no person is entitled to dependency death benefits pursuant to the proceedings that were commenced within that period.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

(Added by Stats. 2014, Ch. 15, Sec. 3. Effective January 1, 2015. Repealed as of January 1, 2019, by its own provisions.)

5407. The period within which may be commenced proceedings for the collection of compensation on the ground of serious and willful misconduct of the employer, under provisions of Section 4553, is as follows:

Twelve months from the date of injury. This period shall not be extended by payment of compensation, agreement therefor, or the filing of application for compensation benefits under other provisions of this division.

(Amended by Stats. 1972, Ch. 618.)

5407.5. The period within which may be commenced proceedings for the reduction of compensation on the ground of serious and willful misconduct of the employee, under provisions of Section 4551, is as follows:

Twelve months from the date of injury. However, this limitation shall not apply in any case where the employee has commenced proceedings for the increase of compensation on the ground of serious and willful misconduct of the employer.

(Amended by Stats. 1972, Ch. 618.)

5408. If an injured employee or, in the case of the employee's death, any of the employee's dependents, is under 18 years of age or incompetent at any time when any right or privilege accrues to such employee or dependent under this division, a guardian or conservator of the estate appointed by the court, or a guardian ad litem or trustee appointed by the appeals board, may, on behalf of the employee or dependent, claim and exercise any right or privilege with the same force and effect as if no disability existed.

No limitation of time provided by this division shall run against any person under 18 years of age or any incompetent unless and until a guardian or conservator of the estate or trustee is appointed. The appeals board may determine the fact of the minority or incompetency of any injured employee and may appoint a trustee to receive and disburse compensation payments for the benefit of such minor or incompetent and his family.

(Amended by Stats. 1979, Ch. 730.)

5409. The running of the period of limitations prescribed by this chapter is an affirmative defense and operates to bar the remedy and not to extinguish the right of the employee. Such defense may be waived. Failure to present such defense prior to the submission of the cause for decision is a sufficient waiver.

(Enacted by Stats. 1937, Ch. 90.)

5410. Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Amended by Stats. 2014, Ch. 217, Sec. 6. Effective January 1, 2015.)

5410.1. Should any party to a proceeding institute proceedings to reduce the amount of permanent disability awarded to an applicant by the appeals board and be unsuccessful in such proceeding, the board may make a finding as to the amount of a reasonable attorney's fee incurred by the applicant in resisting such proceeding to reduce permanent disability benefits previously awarded by the appeals board and assess the

same as costs upon the party instituting the proceeding for the reduction of permanent disability benefits.

(Added by Stats. 1971, Ch. 1558.)

5411. The date of injury, except in cases of occupational disease or cumulative injury, is that date during the employment on which occurred the alleged incident or exposure, for the consequences of which compensation is claimed.

(Amended by Stats. 1973, Ch. 1024.)

5412. The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

(Amended by Stats. 1973, Ch. 1024.)

5413. A determination of facts by the appeals board under this chapter has no collateral estoppel effect on a subsequent criminal prosecution and does not preclude litigation of those same facts in the criminal proceeding.

(Added by Stats. 1995, Ch. 158, Sec. 2. Effective January 1, 1996.)

Chapter 2.3. Workers' Compensation—Truth in Advertising

(Chapter 2.3 added by Stats. 1992, Ch. 904, Sec. 1.)

5430. This chapter shall be known and may be cited as the Workers' Compensation Truth in Advertising Act of 1992.

(Added by Stats. 1992, Ch. 904, Sec. 1. Effective January 1, 1993.)

5431. The purpose of this chapter is to assure truthful and adequate disclosure of all material and relevant information in the advertising which solicits persons to file workers' compensation claims or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim.

(Added by Stats. 1992, Ch. 904, Sec. 1. Effective January 1, 1993.)

5432. (a) Any advertisement which solicits persons to file workers' compensation claims or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement or other written advertising medium shall state at the top or bottom on the front side or surface of the document in at least 12-point roman boldface type font, except for any billboard which shall be in type whose letters are 12 inches in height or any transit advertisement which shall be in type whose letters are seven inches in height and for any television announcement which shall be in 12-point roman boldface type font and appear in a dark background and remain on the screen for a minimum of five seconds and for any radio announcement which shall be read at an understandable pace with no loud music or sound effects, or both, to compete for the listener's attention, the following:

NOTICE

Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

(b) Any television or radio announcement published or disseminated in this state which solicits persons to file workers' compensation claims or to engage or consult counsel to consider a workers' compensation claim under this code shall include the following spoken statement by the announcer of the advertisement:

"Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine."

(c) This chapter does not supersede or repeal any regulation which governs advertising under this code and those regulations shall continue to be in force in addition to this chapter.

(d) For purposes of subdivisions (a) and (b), the notice or statement shall be written or spoken in English. In those cases where the preponderance of the listening or reading public receives information other than in the English language, the written notice or spoken statement shall be in those other languages.

(Added by Stats. 1992, Ch. 904, Sec. 1. Effective January 1, 1993.)

5433. (a) Any advertisement or other device designed to produce leads based on a response from a person to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic shall disclose that an agent may contact the individual if that is the fact. In addition, an individual who makes contact with a person as a result of acquiring that individual's name from a lead generating device shall disclose that fact in the initial contact with that person.

(b) No person shall solicit persons to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(c) For purposes of this section, an advertisement includes a solicitation in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement, or other written advertising medium, and includes envelopes, stationery, business cards, or other material designed to encourage the filing of a workers' compensation claim.

(d) Advertisements shall not employ words, initials, letters, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, or other entity that they could have the capacity or tendency to mislead the public. Examples of misleading materials include, but are not limited to, those that imply any of the following:

(1) The advertisement is in some way provided by or is endorsed by a governmental agency or charitable institution.

(2) The advertiser is the same as, is connected with, or is endorsed by a governmental agency or charitable institution.

(e) Advertisements may not use the name of a state or political subdivision thereof in an advertising solicitation.

(f) Advertisements may not use any name, service mark, slogan, symbol, or any device in any manner which implies that the advertiser, or any person or entity associated with the advertiser, or that any agency who may call upon the person in response to the advertisement, is connected with a governmental agency.

(g) Advertisements may not imply that the reader, listener, or viewer may lose a right or privilege or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(Amended by Stats. 1999, Ch. 83, Sec. 135. Effective January 1, 2000.)

5434. (a) Any advertiser who violates Section 5431 or 5432 is guilty of a misdemeanor.

(b) For the purposes of this chapter, "advertiser" means any person who provides workers' compensation claims services which are described in the written or broadcast advertisements, any person to whom persons solicited by the advertisements

are directed to for inquiries or the provision of workers' compensation claims related services, or any person paying for the preparation, broadcast, printing, dissemination, or placement of the advertisements.

(Added by Stats. 1992, Ch. 904, Sec. 1. Effective January 1, 1993.)

Chapter 2.5. Administrative Assistance

(Chapter 2.5 added by Stats. 1976, Ch. 1017.)

5450. The Division of Workers' Compensation shall make available to employees, employers and other interested parties information, assistance, and advice to assure the proper and timely furnishing of benefits and to assist in the resolution of disputes on an informal basis.

(Amended by Stats. 1994, Ch. 1097, Sec. 19. Effective January 1, 1995.)

5451. Any party may consult with, or seek the advice of, an information and assistance officer within the Division of Workers' Compensation as designated by the administrative director. If no application is filed, if the employee is not represented, or upon agreement of the parties, the information and assistance officer shall consider the contentions of the parties and may refer the matter to the appropriate bureau or unit within the Division of Workers' Compensation for review and recommendations. The information and assistance officer shall advise the employer and the employee of their rights, benefits, and obligations under this division. Upon making a referral, the information and assistance officer shall arrange for a copy of any pertinent material submitted to be served upon the parties or their representatives, if any. The procedures to be followed by the information and assistance officer shall be governed by the rules and regulations of the administrative director adopted after public hearings.

(Amended by Stats. 1994, Ch. 1097, Sec. 20. Effective January 1, 1995.)

5453. After consideration of the information submitted, including the reports of any bureau or unit within the Division of Workers' Compensation which have been received, the information and assistance officer shall make a recommendation which shall be served on the parties or their representatives, if any.

(Amended by Stats. 1994, Ch. 1097, Sec. 22. Effective January 1, 1995.)

5454. Submission of any matter to an information and assistance officer of the Division of Workers' Compensation shall toll any applicable statute of limitations for the period that the matter is under consideration by the information and assistance officer, and for 60 days following the issuance of his or her recommendation.

(Amended by Stats. 1994, Ch. 1097, Sec. 23. Effective January 1, 1995.)

5455. Nothing in this chapter shall prohibit any party from filing an application for benefits under this division. In any proceeding pursuant to such application, the admissibility of written evidence or reports submitted by any party pursuant to this chapter, or Section 5502, shall be governed by Chapter 5 (commencing with Section 5700).

(Amended by Stats. 1983, Ch. 142, Sec. 109.)

Chapter 3. Applications and Answers

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

5500. No pleadings other than the application and answer shall be required. Both shall be in writing and shall conform to forms prescribed by the appeals board in its rules of practice and procedure, simply but clearly and completely delineating all relevant matters of agreement and all issues of disagreement within the jurisdiction of the appeals board, and providing for the furnishing of any additional information as the appeals board may properly determine necessary to expedite its hearing and determination of the claim.

The amendment of this section made during the 1993 portion of the 1993–94 Regular Session shall apply to all applications filed on or after January 1, 1994.

Notwithstanding Section 5401, except where a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, the filing of an application for adjudication and not the filing of a claim form shall establish the jurisdiction of the appeals board and shall commence proceedings before the appeals board for the collection of benefits.

(Amended by Stats. 1994, Ch. 1118, Sec. 9. Effective January 1, 1995.)

5500.3. (a) The appeals board shall establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board. No district office of the appeals board or workers' compensation administrative law judge shall require forms or procedures other than as established by the appeals board. A workers' compensation administrative law judge who violates this section may be subject to disciplinary proceedings.

(b) The appeals board shall establish uniform court procedures and uniform forms for all other proceedings of the appeals board.

(Amended by Stats. 2011, Ch. 559, Sec. 15. Effective October 7, 2011.)

5500.5. (a) Except as otherwise provided in Section 5500.6, liability for occupational disease or cumulative injury claims filed or asserted on or after January 1, 1978, shall be limited to those employers who employed the employee during a period of four years immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first. Commencing January 1, 1979, and thereafter on the first day of January for each of the next two years, the liability period for occupational disease or cumulative injury shall be decreased by one year so that liability is limited in the following manner:

For claims filed orasserted on or after:	The period shall be:
January 1, 1979	three years
January 1, 1980	two years
January 1, 1981 and thereafter	one year

In the event that none of the employers during the above referenced periods of occupational disease or cumulative injury are insured for workers' compensation coverage or an approved alternative thereof, liability shall be imposed upon the last year of employment exposing the employee to the hazards of the occupational disease or cumulative injury for which an employer is insured for workers' compensation coverage or an approved alternative thereof.

Any employer held liable for workers' compensation benefits as a result of another employer's failure to secure the payment of compensation as required by this division shall be entitled to reimbursement from the employers who were unlawfully uninsured during the last year of the employee's employment, and shall be subrogated to the rights granted to the employee against the unlawfully uninsured employers under the provisions of Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4.

If, based upon all the evidence presented, the appeals board or workers' compensation judge finds the existence of cumulative

injury or occupational disease, liability for the cumulative injury or occupational disease shall not be apportioned to prior or subsequent years; however, in determining the liability, evidence of disability due to specific injury, disability due to nonindustrial causes, or disability previously compensated for by way of a findings and award or order approving compromise and release, or a voluntary payment of disability, may be admissible for purposes of apportionment.

(b) Where a claim for compensation benefits is made on account of an occupational disease or cumulative injury which may have arisen out of more than one employment, the application shall state the names and addresses of all employers liable under subdivision (a), the places of employment, and the approximate periods of employment where the employee was exposed to the hazards of the occupational disease or cumulative injury. If the application is not so prepared or omits necessary and proper employers, any interested party, at or prior to the first hearing, may request the appeals board to join as defendant any necessary or proper party. If the request is made prior to the first hearing on the application, the appeals board shall forthwith join the employer as a party defendant and cause a copy of the application together with a notice of the time and place of hearing to be served upon the omitted employer; provided, the notice can be given within the time specified in this division. If the notice cannot be timely given or if the motion for joinder is made at the time of the first hearing, then the appeals board or the workers' compensation judge before whom the hearing is held, if it is found that the omitted employer named is a necessary or proper party, may order a joinder of the party and continue the hearing so that proper notice may be given to the party or parties so joined. Only one continuance shall be allowed for the purpose of joining additional parties. Subsequent to the first hearing the appeals board shall join as a party defendant any additional employer when it appears that the employer is a proper party, but the liability of the employer shall not be determined until supplemental proceedings are instituted.

(c) In any case involving a claim of occupational disease or cumulative injury occurring as a result of more than one employment within the appropriate time period set forth in subdivision (a), the employee making the claim, or his or her dependents, may elect to proceed against any one or more of the employers. Where such an election is made, the employee must successfully prove his or her claim against any one of the employers named, and any award which the appeals board shall issue awarding compensation benefits shall be a joint and several award as against any two or more employers who may be held liable for compensation benefits. If, during the pendency of any claim wherein the employee or his or her dependents has made an election to proceed against one or more employers, it should appear that there is another proper party not yet joined, the additional party shall be joined as a defendant by the appeals board on the motion of any party in interest, but the liability of the employer shall not be determined until supplemental proceedings are instituted. Any employer joined as a defendant subsequent to the first hearing or subsequent to the election provided herein shall not be entitled to participate in any of the proceedings prior to the appeal board's final decision, nor to any continuance or further proceedings, but may be permitted to ascertain from the employee or his or her dependents such information as will enable the employer to determine the time, place, and duration of the alleged employment. On supplemental proceedings, however, the right of the employer to full and complete examination or cross-examination shall not be restricted.

(d) (1) In the event a self-insured employer which owns and operates a work location in the State of California, sells or has sold the ownership and operation of the work location pursuant to a sale of a business or all or part of the assets of a business to another self-insured person or entity after January 1, 1974, but before January 1, 1978, and all the requirements of subparagraphs (A) to (D), inclusive, exist, then the liability of the employer-seller and employer-buyer, respectively, for cumulative injuries suffered by employees employed at the work location immediately before the sale shall, until January 1, 1986, be governed by the provisions of this section which were in effect on the date of that sale.

(A) The sale constitutes a material change in ownership of such work location.

(B) The person or entity making the purchase continues the operation of the work location.

(C) The person or entity becomes the employer of substantially all of the employees of the employer-seller.

(D) The agreement of sale makes no special provision for the allocation of liabilities for workers' compensation between the buyer and the seller.

(2) For purposes of this subdivision:

(A) "Work location" shall mean any fixed place of business, office, or plant where employees regularly work in the trade or business of the employer.

(B) A "material change in ownership" shall mean a change in ownership whereby the employer-seller does not retain, directly or indirectly, through one or more corporate entities, associations, trusts, partnerships, joint ventures, or family members, a controlling interest in the work location.

(3) This subdivision shall have no force or effect on or after January 1, 1986, unless otherwise extended by the Legislature prior to that date, and it shall not have any force or effect as respects an employee who, subsequent to the sale described in paragraph (1) and prior to the date of his or her application for compensation benefits has been filed, is transferred to a different work location by the employer-buyer.

(4) If any provision of this subdivision or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this subdivision which can be given effect without the invalid provision or application, and to this end the provisions of this subdivision are severable.

(e) At any time within one year after the appeals board has made an award for compensation benefits in connection with an occupational disease or cumulative injury, any employer held liable under the award may institute proceedings before the appeals board for the purpose of determining an apportionment of liability or right of contribution. The proceeding shall not diminish, restrict, or alter in any way the recovery previously allowed the employee or his or her dependents, but shall be limited to a determination of the respective contribution rights, interest or liabilities of all the employers joined in the proceeding, either initially or supplementally; provided, however, if the appeals board finds on supplemental proceedings for the purpose of determining an apportionment of liability or of a right of contribution that an employer previously held liable in fact has no liability, it may dismiss the employer and amend its original award in such manner as may be required.

(f) If any proceeding before the appeals board for the purpose of determining an apportionment of liability or of a right of

contribution where any employee incurred a disability or death resulting from silicosis in underground metal mining operations, the determination of the respective rights and interests of all of the employers joined in the proceedings either initially or supplementally shall be as follows:

(1) All employers whose underground metal mining operations resulted in a silicotic exposure during the period of the employee's employment in those operations shall be jointly and severally liable for the payment of compensation and of medical, surgical, legal and hospital expense which may be awarded to the employee or his or her estate or dependents as the result of disability or death resulting from or aggravated by the exposure.

(2) In making its determination in the supplemental proceeding for the purpose of determining an apportionment of liability or of a right of contribution of percentage liabilities of the various employers engaged in underground metal mining operations the appeals board shall consider as a rebuttal presumption that employment in underground work in any mine for a continuous period of more than three calendar months will result in a silicotic exposure for the employee so employed during the period of employment if the underground metal mine was driven or sunk in rock having a composition which will result in dissemination of silica or silicotic dust particles when drilled, blasted, or transported.

(g) Any employer shall be entitled to rebut the presumption by showing to the satisfaction of the appeals board, or the workers' compensation judge, that the mining methods used by the employer in the employee's place of employment did not result during his or her employment in the creation of silica dust in sufficient amount or concentration to constitute a silicotic hazard. Dust counts, competently made, at intervals and in locations as meet the requirements of the Division of Occupational Safety and Health for safe working conditions may be received as evidence of the amount and concentration of silica dust in the workings where the counts have been made at the time when they were made. The appeals board may from time to time, as its experience may indicate proper, promulgate orders as to the frequency with which dust counts shall be taken in different types of workings in order to justify their acceptance as evidence of the existence or nonexistence of a silicotic hazard in the property where they have been taken.

(h) The amendments to this section adopted at the 1959 Regular Session of the Legislature shall operate retroactively, and shall apply retrospectively to any cases pending before the appeals board or courts. From and after the date this section becomes effective no payment shall be made out of the fund used for payment of the additional compensation provided for in Section 4751, or out of any other state funds, in satisfaction of any liability heretofore incurred or hereafter incurred, except awards which have become final without regard to the continuing jurisdiction of the appeals board on that effective date, and the state and its funds shall be without liability therefor. This subdivision shall not in any way effect a reduction in any benefit conferred or which may be conferred upon any injured employee or his dependents.

(i) The amendments to this section adopted at the 1977 Regular Session of the Legislature shall apply to any claims for benefits under this division which are filed or asserted on or after January 1, 1978, unless otherwise specified in this section.

(Amended by Stats. 1985, Ch. 326, Sec. 20.)

5500.6. Liability for occupational disease or cumulative injury which results from exposure solely during employment as an employee, as defined in subdivision (d) of Section 3351, shall be limited to those employers in whose employment the employee was exposed to the hazards of the occupational disease or cumulative injury during the last day on which the employee was employed in an occupation exposing the employee to the hazards of the disease or injury. In the event that none of the employers of the last day of hazardous employment is insured for workers' compensation liability, that liability, shall be imposed upon the last employer exposing the employee to the hazards of the occupational disease or cumulative injury who has secured workers' compensation insurance coverage or an approved alternative thereto. If, based upon all the evidence presented, the appeals board or the workers' compensation judge finds the existence of cumulative injury or occupational disease, liability for the cumulative injury or occupational disease shall not be apportioned to prior employers. However, in determining liability, evidence of disability due to specific injury, disability due to non-work-related causes, or disability previously compensated for by way of a findings and award or order approving compromise and release, or a voluntary payment of disability, may be admissible for purposes of apportionment.

(Amended by Stats. 1985, Ch. 326, Sec. 21.)

5501. The application may be filed with the appeals board by any party in interest, his attorney, or other representative authorized in writing. A representative who is not an attorney licensed by the State Bar of this state shall notify the appeals board in writing that he or she is not an attorney licensed by the State Bar of this state. Upon the filing of the application, the appeals board shall, where the applicant is represented by an attorney or other representative, serve a conformed copy of the application showing the date of filing and the case number upon applicant's attorney or representative. The applicant's attorney or representative shall, upon receipt of the conformed copy, forthwith serve a copy of the conformed application upon all other parties to the claim. If the applicant is unrepresented, a copy thereof shall forthwith be served upon all adverse parties by the appeals board.

(Amended by Stats. 1991, Ch. 934, Sec. 17.)

5501.5. (a) The application for adjudication of claim shall be filed in any of the following locations:

(1) In the county where the injured employee or dependent of a deceased employee resides on the date of filing.

(2) In the county where the injury allegedly occurred, or, in cumulative trauma and industrial disease claims, where the last alleged injurious exposure occurred.

(3) In the county where the employee's attorney maintains his or her principal place of business, if the employee is represented by an attorney.

(b) If the county selected for filing has more than one office of the appeals board, the application shall be filed at any location of the appeals board within that county that meets the criteria specified in subdivision (a). The written consent of the employee, or dependent of a deceased employee, to the selected venue site shall be filed with the application.

(c) If the venue site where the application is to be filed is the county where the employee's attorney maintains his or her principal place of business, the attorney for the employee shall indicate that venue site when forwarding the information request form required by Section 5401.5. The employer shall have 30 days from receipt of the information request form to object to the selected venue site. Where there is an employer objection to a venue site under paragraph (3) of subdivision (a), then the

application shall be filed pursuant to either paragraph (1) or (2) of subdivision (a).

(d) If there is no appeals board office in the county where venue is permitted under subdivision (a), the application shall be filed at the appeals board office nearest the residence on the date of filing of the injured employee or dependent of a deceased employee, or the nearest place where the injury allegedly occurred, or, in cumulative trauma and industrial disease claims, where the last injurious exposure occurred, or nearest the location where the attorney of the employee maintains his or her principal place of business, unless the employer objects under subdivision (c).

(Added by Stats. 1990, Ch. 1550, Sec. 59.)

5501.6. (a) An applicant or defendant may petition the appeals board for a change of venue and a change of venue shall be granted for good cause. The reasons for the change of venue shall be specifically set forth in the request for change of venue.

(b) If a change of venue is requested for the convenience of witnesses, the names and addresses of these witnesses and the substance of their testimony shall be specifically set forth in the request for change of venue.

(Added by Stats. 1990, Ch. 1550, Sec. 60.)

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the appeals board, is filed. If a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following, provided that if an expedited hearing is requested, no other issue may be heard until the medical provider network dispute is resolved:

(1) The employee's entitlement to medical treatment pursuant to Section 4600, except for treatment issues determined pursuant to Sections 4610 and 4610.5.

(2) Whether the injured employee is required to obtain treatment within a medical provider network.

(3) A medical treatment appointment or medical-legal examination.

(4) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(5) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(6) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The administrative director shall establish a priority conference calendar for cases in which the employee is represented by an attorney or is or was employed by an illegally uninsured employer and the issues in dispute are employment or injury arising out of employment or in the course of employment. The conference shall be conducted by a workers' compensation administrative law judge within 30 days after the declaration of readiness to proceed. If the dispute cannot be resolved at the conference, a trial shall be set as expeditiously as possible, unless good cause is shown why discovery is not complete, in which case status conferences shall be held at regular intervals. The case shall be set for trial when discovery is complete, or when the workers' compensation administrative law judge determines that the parties have had sufficient time in which to complete reasonable discovery. A determination as to the rights of the parties shall be made and filed within 30 days after the trial.

(d) (1) In all cases, a mandatory settlement conference, except a lien conference or a mandatory settlement lien conference, shall be conducted not less than 10 days, and not more than 30 days, after the filing of a declaration of readiness to proceed. If the dispute is not resolved, the regular hearing, except a lien trial, shall be held within 75 days after the declaration of readiness to proceed is filed.

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(e) In cases involving the Director of Industrial Relations in his or her capacity as administrator of the Uninsured Employers Fund, this section shall not apply unless proof of service, as specified in paragraph (1) of subdivision (d) of Section 3716, has been filed with the appeals board and provided to the Director of Industrial Relations, valid jurisdiction has been established over the employer, and the fund has been joined.

(f) Except as provided in subdivision (a), this section shall apply irrespective of the date of injury.

(Amended by Stats. 2014, Ch. 156, Sec. 1. Effective January 1, 2015.)

5502.5. A continuance of any conference or hearing required by Section 5502 shall not be favored, but may be granted by a workers' compensation judge upon any terms as are just upon a showing of good cause. When determining a request for continuance, the workers' compensation judge shall take into consideration the complexity of the issues, the diligence of the parties, and the prejudice incurred on the part of any party by reasons of granting or denying a continuance.

(Added by Stats. 1990, Ch. 1550, Sec. 62.)

5503. The person so applying shall be known as the applicant and the adverse party shall be known as the defendant.

(Enacted by Stats. 1937, Ch. 90.)

5504. A notice of the time and place of hearing shall be served upon the applicant and all adverse parties and may be served either in the manner of service of a summons in a civil

action or in the same manner as any notice that is authorized or required to be served under the provisions of this division.

(Amended by Stats. 1971, Ch. 393.)

5505. If any defendant desires to disclaim any interest in the subject matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete, or desires to bring any fact, paper, or document to the attention of the appeals board as a defense to the claim or otherwise, he may, within 10 days after the service of the application upon him, file with or mail to the appeals board his answer in such form as the appeals board may prescribe, setting forth the particulars in which the application is inaccurate or incomplete, and the facts upon which he intends to rely. A copy of the answer shall be forthwith served upon all adverse parties. Evidence upon matters not pleaded by answer shall be allowed only upon the terms and conditions imposed by the appeals board or referee holding the hearing.

(Amended by Stats. 1965, Ch. 1513.)

5506. If the defendant fails to appear or answer, no default shall be taken against him, but the appeals board shall proceed to the hearing of the matter upon the terms and conditions which it deems proper. A defendant failing to appear or answer, or subsequently contending that no service was made upon him, or claiming to be aggrieved in any other manner by want of notice of the pendency of the proceedings, may apply to the appeals board for relief substantially in accordance with the provisions of Section 473 of the Code of Civil Procedure. The appeals board may afford such relief. No right to relief, including the claim that the findings and award of the appeals board or judgment entered thereon are void upon their face, shall accrue to such defendant in any court unless prior application is made to the appeals board in accordance with this section. In no event shall any petition to any court be allowed except as prescribed in Sections 5950 and 5951.

(Amended by Stats. 1965, Ch. 1513.)

5507. If an application shows upon its face that the applicant is not entitled to compensation, the appeals board may, after opportunity to the applicant to be heard orally or to submit his claim or argument in writing dismiss the application without any hearing thereon. Such dismissal may be upon the motion of the appeals board or upon motion of the adverse party. The pendency of such motion or notice of intended dismissal shall not, unless otherwise ordered by the appeals board, delay the hearing on the application upon its merits.

(Amended by Stats. 1965, Ch. 1513.)

Chapter 4. Attachments

(Chapter 4 enacted by Stats. 1937, Ch. 90.)

5600. The appeals board may, upon the filing of an application by or on behalf of an injured employee, the employee's dependents, or any other party in interest, direct the clerk of the superior court of any county to issue writs of attachment authorizing the sheriff to attach the property of the defendant as security for the payment of any compensation which may be awarded in any of the following cases:

(a) In any case mentioned in Section 415.50 of the Code of Civil Procedure.

(b) Where the employer has failed to secure the payment of compensation as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1.

The attachment shall be in an amount fixed by the appeals board, not exceeding the greatest probable award against the defendant in the matter.

(Amended by Stats. 2002, Ch. 784, Sec. 526. Effective January 1, 2003.)

5601. The provisions of Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure, as far as applicable, shall govern the proceedings upon attachment, the appeals board being substituted therein for the proper court.

(Amended by Stats. 1974, Ch. 1516.)

5602. No writ of attachment shall be issued except upon the order of the appeals board. Such order shall not be made where it appears from the application or affidavit in support thereof that the employer was, at the time of the injury to the employee, insured against liability imposed by this division by any insurer. If, at any time after the levying of an attachment, it appears that such employer was so insured, and the requisites for dismissing the employer from the proceeding and substituting the insurer as defendant under any method prescribed by this division are established, the appeals board shall forthwith discharge the attachment.

(Amended by Stats. 1965, Ch. 1513.)

5603. In levying attachments preference shall be given to the real property of the employer.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 5. Hearings

(Chapter 5 enacted by Stats. 1937, Ch. 90.)

5700. The hearing on the application may be adjourned from time to time and from place to place in the discretion of the appeals board or the workers' compensation judge holding the hearing. Any hearing adjourned by the workers' compensation judge shall be continued to be heard by and shall be concluded and the decision made by the workers' compensation judge who previously heard it. Either party may be present at any hearing, in person, by attorney, or by any other agent, and may present testimony pertinent under the pleadings.

(Amended by Stats. 1985, Ch. 326, Sec. 22.)

5701. The appeals board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the timebooks and payroll of the employer to be examined by any member of the board or a workers' compensation judge appointed by the appeals board. The appeals board may also from time to time direct any employee claiming compensation to be examined by a regular physician. The testimony so taken and the results of any inspection or examination shall be reported to the appeals board for its consideration.

(Amended by Stats. 1985, Ch. 326, Sec. 23.)

5702. The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Amended by Stats. 1965, Ch. 1513.)

5703. The appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing:

(a) Reports of attending or examining physicians.

(1) Statements concerning any bill for services are admissible only if made under penalty of perjury that they are true and correct to the best knowledge of the physician.

(2) In addition, reports are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury.

(b) Reports of special investigators appointed by the appeals board or a workers' compensation judge to investigate and report upon any scientific or medical question.

(c) Reports of employers, containing copies of timesheets, book accounts, reports, and other records properly authenticated.

(d) Properly authenticated copies of hospital records of the case of the injured employee.

(e) All publications of the Division of Workers' Compensation.

(f) All official publications of the State of California and United States governments.

(g) Excerpts from expert testimony received by the appeals board upon similar issues of scientific fact in other cases and the prior decisions of the appeals board upon similar issues.

(h) Relevant portions of medical treatment protocols published by medical specialty societies. To be admissible, the party offering such a protocol or portion of a protocol shall concurrently enter into evidence information regarding how the protocol was developed, and to what extent the protocol is evidence-based, peer-reviewed, and nationally recognized. If a party offers into evidence a portion of a treatment protocol, any other party may offer into evidence additional portions of the protocol. The party offering a protocol, or portion thereof, into evidence shall either make a printed copy of the full protocol available for review and copying, or shall provide an Internet address at which the entire protocol may be accessed without charge.

(i) The medical treatment utilization schedule in effect pursuant to Section 5307.27 or the guidelines in effect pursuant to Section 4604.5.

(j) Reports of vocational experts. If vocational expert evidence is otherwise admissible, the evidence shall be produced in the form of written reports. Direct examination of a vocational witness shall not be received at trial except upon a showing of good cause. A continuance may be granted for rebuttal testimony if a report that was not served sufficiently in advance of the close of discovery to permit rebuttal is admitted into evidence.

(1) Statements concerning any bill for services are admissible only if they comply with the requirements applicable to statements concerning bills for services pursuant to subdivision (a).

(2) Reports are admissible under this subdivision only if the vocational expert has further stated in the body of the report that the contents of the report are true and correct to the best knowledge of the vocational expert. The statement shall be made in compliance with the requirements applicable to medical reports pursuant to subdivision (a).

(Amended by Stats. 2012, Ch. 363, Sec. 81. Effective January 1, 2013.)

5703.5. (a) The appeals board, at any time after an application is filed and prior to the expiration of its jurisdiction may, upon the agreement of a party to pay the cost, direct an unrepresented employee to be examined by a qualified medical evaluator selected by the appeals board, within the scope of the qualified medical evaluator's professional training, upon any clinical question then at issue before the appeals board.

(b) The administrative director or his or her designees, upon the submission of a matter to an information and assistance officer, may, upon the agreement of a party to pay the cost, and with the consent of an unrepresented employee direct the injured employee to be examined by a qualified medical evaluator selected by the medical director, within the scope of the qualified medical evaluator's professional training, upon any clinical question, other than those issues specified in Section 4061, then pertinent to the investigation of the information and assistance officer.

(c) The 1989 and 1990 amendments to this section shall become operative for injuries occurring on and after January 1, 1991.

(Amended by Stats. 1990, Ch. 1550, Sec. 63.)

5704. Transcripts of all testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding, and an opportunity shall be given to produce evidence in explanation or rebuttal thereof before decision is rendered.

(Amended by Stats. 1951, Ch. 1003.)

5705. The burden of proof rests upon the party or lien claimant holding the affirmative of the issue. The following are affirmative defenses, and the burden of proof rests upon the employer to establish them:

(a) That an injured person claiming to be an employee was an independent contractor or otherwise excluded from the protection of this division where there is proof that the injured person was at the time of his or her injury actually performing service for the alleged employer.

(b) Intoxication of an employee causing his or her injury.

(c) Willful misconduct of an employee causing his or her injury.

(d) Aggravation of disability by unreasonable conduct of the employee.

(e) Prejudice to the employer by failure of the employee to give notice, as required by Sections 5400 and 5401.

(Amended by Stats. 1993, Ch. 4, Sec. 9. Effective April 3, 1993.)

5706. Where it is represented to the appeals board, either before or after the filing of an application, that an employee has died as a result of injuries sustained in the course of his employment, the appeals board may require an autopsy. The report of the physician performing the autopsy may be received in evidence in any proceedings theretofore or thereafter brought. If at the time the autopsy is requested, the body of the employee is in the custody of the coroner, the coroner shall, upon the request of the appeals board or of any party interested, afford reasonable opportunity for the attendance of any physicians named by the appeals board at any autopsy ordered by him. If the coroner does not require, or has already performed the autopsy, he shall permit an autopsy or reexamination to be performed by physicians named by the appeals board. No fee shall be charged by the coroner for any service, arrangement, or permission given by him.

(Amended by Stats. 1965, Ch. 1513.)

5707. If the body of a deceased employee is not in the custody of the coroner, the appeals board may authorize the performance of such autopsy and, if necessary, the exhumation of the body therefor. If the dependents, or a majority thereof, of any such deceased employee, having the custody of the body refuse to allow the autopsy, it shall not be performed. In such case, upon the hearing of any application for compensation it is a disputable

presumption that the injury or death was not due to causes entitling the claimants to benefits under this division.

(Amended by Stats. 1965, Ch. 1513.)

5708. All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.

(Amended by Stats. 1985, Ch. 326, Sec. 25.)

5709. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

(Amended by Stats. 1951, Ch. 778.)

5710. (a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers' compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) If the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals, and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) One copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer. The administrative director shall, on or before July 1, 2018, determine the range of reasonable fees to be paid.

(5) If interpretation services are required because the injured employee or deponent does not proficiently speak or understand the English language, upon a request from either, the employer shall pay for the services of a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The fee to be paid by the employer shall be in accordance with the fee schedule adopted by the administrative director and shall include any other deposition-related events as permitted by the administrative director.

(Amended by Stats. 2016, Ch. 868, Sec. 11. Effective January 1, 2017.)

Chapter 6. Findings and Awards

(Chapter 6 enacted by Stats. 1937, Ch. 90.)

5800. All awards of the appeals board either for the payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. Such interest shall run from the date of making and filing of an award, as to amounts which by the terms of the award are payable forthwith. As to amounts which under the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date when each such amount becomes due and payable.

(Amended by Stats. 1965, Ch. 1513.)

5800.5. The 30-day period specified in Section 5313, shall run from the date of the submission of the application for decision and the provisions requiring the decision within such 30-day period shall be deemed mandatory and not merely directive.

(Amended by Stats. 1953, Ch. 1256.)

5801. The appeals board in its award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of disability.

In the event the injured employee or the dependent of a deceased employee prevails in any petition by the employer for a writ of review from an award of the appeals board and the reviewing court finds that there is no reasonable basis for the petition, it shall remand the cause to the appeals board for the purpose of making a supplemental award awarding to the injured employee or his attorney, or the dependent of a deceased employee or his attorney a reasonable attorney's fee for services rendered in connection with the petition for writ of review. Any such fee shall be in addition to the amount of compensation otherwise recoverable and shall be paid as part of the award by the party liable to pay such award.

(Amended by Stats. 1965, Ch. 1513.)

5802. If, in any proceeding under this division, it is proved that an injury has been suffered for which the employer would be liable to pay compensation if disability had resulted therefrom, but it is not proved that any disability has resulted, the appeals board may, instead of dismissing the application, award a nominal disability indemnity, if it appears that disability is likely to result at a future time.

(Amended by Stats. 1965, Ch. 1513.)

5803. The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.

This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

(Amended by Stats. 1982, Ch. 922, Sec. 16.)

5803.5. Any conviction pursuant to Section 1871.4 of the Insurance Code that materially affects the basis of any order, decision, or award of the appeals board shall be sufficient grounds for a reconsideration of that order, decision, or award.

(Added by Stats. 1991, Ch. 116, Sec. 33.)

5804. No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any counterpetition seeking other relief filed by the adverse party within 30 days of the original petition raising issues in addition to those raised by such original petition. Provided, however, that after an award has been made finding that there was employment and the time to petition for a rehearing or reconsideration or review has expired or such petition if made has been determined, the appeals board upon a petition to reopen shall not have the power to find that there was no employment.

(Amended by Stats. 1965, Ch. 1513.)

5805. Any order, decision, or award rescinding, altering or amending a prior order, decision, or award shall have the effect herein provided for original orders, decisions, and awards.

(Enacted by Stats. 1937, Ch. 90.)

5806. Any party affected thereby may file a certified copy of the findings and order, decision, or award of the appeals board with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity therewith. The words "any party affected thereby" include the Uninsured Employers Fund. In any case in which the findings and order, decision, or award of the appeals board is against an employer that has failed to secure the payment of compensation, the State of California on behalf of the Uninsured Employers Fund shall be entitled to have judgment entered not only against the employer, but also against any person found to be parents or substantial shareholders under Section 3717.

(Amended by Stats. 1992, Ch. 1226, Sec. 4. Effective January 1, 1993.)

5807. The certified copy of the findings and order, decision, or award of the appeals board and a copy of the judgment constitute the judgment-roll. The pleadings, all orders of the appeals board, its original findings and order, decision, or award, and all other papers and documents filed in the cause shall remain on file in the office of the appeals board.

(Amended by Stats. 1965, Ch. 1513.)

5808. The appeals board or a member thereof may stay the execution of any judgment entered upon an order, decision, or award of the appeals board, upon good cause appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of such order shall be filed with the clerk entering judgment. Where it is desirable to stay the enforcement of an order, decision, or award and a certified copy thereof and of the findings has not been issued, the appeals board or a member thereof may order the certified copy to be withheld with the same force and under the same conditions as it might issue a stay of execution if the certified copy had been issued and judgment entered thereon.

(Amended by Stats. 1965, Ch. 1513.)

5809. When a judgment is satisfied in fact, otherwise than upon an execution, the appeals board may, upon motion of either party or of its own motion, order the entry of satisfaction of the judgment. The clerk shall enter satisfaction of judgment only upon the filing of a certified copy of such order.

(Amended by Stats. 1965, Ch. 1513.)

5810. The orders, findings, decisions, or awards of the appeals board made and entered under this division may be reviewed by the courts specified in Sections 5950 to 5956 within the time and in the manner therein specified and not otherwise.

(Amended by Stats. 1965, Ch. 1513.)

5811. (a) No fees shall be charged by the clerk of any court for the performance of any official service required by this division, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this division before the appeals board, costs as between the parties may be allowed by the appeals board.

(b) (1) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter.

(2) A qualified interpreter is a language interpreter who is certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The duty of an interpreter is to accurately and impartially translate oral communications and transliterate written materials, and not to act as an agent or advocate. An interpreter shall not disclose to any person who is not an immediate participant in the communications the content of the conversations or documents that the interpreter has interpreted or transliterated unless the disclosure is compelled by court order. An attempt by any party or attorney to obtain disclosure is a bad faith tactic that is subject to Section 5813.

Interpreter fees that are reasonably, actually, and necessarily incurred shall be paid by the employer under this section, provided they are in accordance with the fee schedule adopted by the administrative director.

A qualified interpreter may render services during the following:

(A) A deposition.

(B) An appeals board hearing.

(C) A medical treatment appointment or medical-legal examination.

(D) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who does not proficiently speak or understand the English language.

(c) The administrative director shall promulgate regulations establishing criteria to verify the identity and credentials of individuals who provide interpreter services in all necessary settings and proceedings within the workers' compensation system. Those regulations shall be adopted no later than January 1, 2018.

(Amended by Stats. 2016, Ch. 868, Sec. 12. Effective January 1, 2017.)

5813. (a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.

(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

(c) This section shall apply to all applications for adjudication that are filed on or after January 1, 1994.

(Amended by Stats. 1993, Ch. 1242, Sec. 41. Effective January 1, 1994.)

5814. (a) When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars ($10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.

(b) If a potential violation of this section is discovered by the employer prior to an employee claiming a penalty under this section, the employer, within 90 days of the date of the discovery, may pay a self-imposed penalty in the amount of 10 percent of the amount of the payment unreasonably delayed or refused, along with the amount of the payment delayed or refused. This self-imposed penalty shall be in lieu of the penalty in subdivision (a).

(c) Upon the approval of a compromise and release, findings and awards, or stipulations and orders by the appeals board, it shall be conclusively presumed that any accrued claims for penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim for penalty is expressly excluded by the terms of the order or award. Upon the submission of any issue for determination at a regular trial hearing, it shall be conclusively presumed that any accrued claim for penalty in connection with the benefit at issue has been resolved, regardless of whether a petition for penalty has been filed, unless the issue of penalty is also submitted or is expressly excluded in the statement of issues being submitted.

(d) The payment of any increased award pursuant to subdivision (a) shall be reduced by any amount paid under subdivision (d) of Section 4650 on the same unreasonably delayed or refused benefit payment.

(e) No unreasonable delay in the provision of medical treatment shall be found when the treatment has been authorized by the employer in a timely manner and the only dispute concerns payment of a billing submitted by a physician or medical provider as provided in Section 4603.2.

(f) Nothing in this section shall be construed to create a civil cause of action.

(g) Notwithstanding any other provision of law, no action may be brought to recover penalties that may be awarded under this section more than two years from the date the payment of compensation was due.

(h) This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section.

(i) This section shall become operative on June 1, 2004.

(Repealed (in Sec. 42) and added by Stats. 2004, Ch. 34, Sec. 43. Effective April 19, 2004. Section operative June 1, 2004, by its own provisions.)

5814.1. When the payment of compensation has been unreasonably delayed or refused prior to the issuance of an award, and the director has provided discretionary compensation pursuant to Section 4903.3, the appeals board shall award to the director a penalty to be paid by the employer in the amount of 10 percent of the compensation so provided by the director, such penalty to be in addition to the penalty imposed by Section 5814. The question of delay and the reasonableness of the cause therefor shall be determined by the appeals board in accordance with the facts.

(Added by Stats. 1981, Ch. 894, Sec. 10.)

5814.5. When the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award by an employer that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, in addition to increasing the order, decision, or award pursuant to Section 5814, award reasonable attorneys' fees incurred in enforcing the payment of compensation awarded.

(Amended by Stats. 2002, Ch. 6, Sec. 82. Effective January 1, 2003.)

5814.6. (a) Any employer or insurer that knowingly violates Section 5814 with a frequency that indicates a general business practice is liable for administrative penalties of not to exceed four hundred thousand dollars ($400,000). Penalty payments shall be imposed by the administrative director and deposited into the Return-to-Work Fund established pursuant to Section 139.48.

(b) The administrative director may impose a penalty under either this section or subdivision (e) of Section 129.5.

(c) This section shall become operative on June 1, 2004.

(Added by Stats. 2004, Ch. 34, Sec. 44. Effective April 19, 2004. Section operative June 1, 2004, by its own provisions.)

5815. Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the appeals board prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

(Amended by Stats. 1965, Ch. 1513.)

5816. A determination of facts by the appeals board under this chapter has no collateral estoppel effect on a subsequent criminal prosecution and does not preclude litigation of those same facts in the criminal proceeding.

(Added by Stats. 1995, Ch. 158, Sec. 3. Effective January 1, 1996.)

Chapter 7. Reconsideration and Judicial Review

(Heading of Chapter 7 amended by Stats. 1951, Ch. 778.)

Article 1. Reconsideration

(Heading of Article 1 amended by Stats. 1951, Ch. 778.)

5900. (a) Any person aggrieved directly or indirectly by any final order, decision, or award made and filed by the appeals board or a workers' compensation judge under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration. The petition shall be made only within the time and in the manner specified in this chapter.

(b) At any time within 60 days after the filing of an order, decision, or award made by a workers' compensation judge and the accompanying report, the appeals board may, on its own motion, grant reconsideration.

(Amended by Stats. 1985, Ch. 326, Sec. 27.)

5901. No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. Nothing herein contained shall prevent the enforcement of any final order, decision, or award, in the manner provided in this division.

(Amended by Stats. 1985, Ch. 326, Sec. 28.)

5902. The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge

to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.

(Amended by Stats. 1985, Ch. 326, Sec. 29.)

5903. At any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other:

(a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.

(b) That the order, decision, or award was procured by fraud.

(c) That the evidence does not justify the findings of fact.

(d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.

(e) That the findings of fact do not support the order, decision, or award.

Nothing contained in this section shall limit the grant of continuing jurisdiction contained in Sections 5803 to 5805, inclusive.

(Amended by Stats. 1985, Ch. 326, Sec. 30.)

5904. The petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration.

(Amended by Stats. 1951, Ch. 778.)

5905. A copy of the petition for reconsideration shall be served forthwith upon all adverse parties by the person petitioning for reconsideration. Any adverse party may file an answer thereto within 10 days thereafter. Such answer shall likewise be verified. The appeals board may require the petition for reconsideration to be served on other persons designated by it.

(Amended by Stats. 1965, Ch. 1513.)

5906. Upon the filing of a petition for reconsideration, or having granted reconsideration upon its own motion, the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge on the basis of the evidence previously submitted in the case, or may grant reconsideration and direct the taking of additional evidence. Notice of the time and place of any hearing on reconsideration shall be given to the petitioner and adverse parties and to other persons as the appeals board orders.

(Amended by Stats. 1985, Ch. 326, Sec. 31.)

5907. If, at the time of granting reconsideration, it appears to the satisfaction of the appeals board that no sufficient reason exists for taking further testimony, the appeals board may affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge and may, without further proceedings, without notice, and without setting a time and place for further hearing, enter its findings, order, decision, or award based upon the record in the case.

(Amended by Stats. 2006, Ch. 538, Sec. 492. Effective January 1, 2007.)

5908. (a) After the taking of additional evidence and a consideration of all of the facts the appeals board may affirm, rescind, alter, or amend the original order, decision, or award. An order, decision, or award made following reconsideration which affirms, rescinds, alters, or amends the original order, decision, or award shall be made by the appeals board but shall not affect any right or the enforcement of any right arising from or by virtue of the original order, decision, or award, unless so ordered by the appeals board.

(b) In any case where the appeals board rescinds or reduces an order, decision, or award on the grounds specified in paragraph (b) of Section 5903, the appeals board shall refer the case to the Bureau of Fraudulent Claims pursuant to Article 4 (commencing with Section 12990) of Chapter 2 of Division 3 of the Insurance Code, if the employer is insured, or to the district attorney of the county in which the fraud occurred if the employer is self-insured.

(Amended by Stats. 1989, Ch. 892, Sec. 54.)

5908.5. Any decision of the appeals board granting or denying a petition for reconsideration or affirming, rescinding, altering, or amending the original findings, order, decision, or award following reconsideration shall be made by the appeals board and not by a workers' compensation judge and shall be in writing, signed by a majority of the appeals board members assigned thereto, and shall state the evidence relied upon and specify in detail the reasons for the decision.

The requirements of this section shall in no way be construed so as to broaden the scope of judicial review as provided for in Article 2 (commencing with Section 5950) of this chapter.

(Amended by Stats. 1985, Ch. 326, Sec. 33.)

5909. A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date of filing.

(Amended by Stats. 1992, Ch. 1226, Sec. 5. Effective January 1, 1993.)

5910. The filing of a petition for reconsideration shall suspend for a period of 10 days the order, decision, or award affected, insofar as it applies to the parties to the petition, unless otherwise ordered by the appeals board. The appeals board upon the terms and conditions which it by order directs, may stay, suspend, or postpone the order, decision, or award during the pendency of the reconsideration.

(Amended by Stats. 1965, Ch. 1513.)

5911. Nothing contained in this article shall be construed to prevent the appeals board, on petition of an aggrieved party or on its own motion, from granting reconsideration of an original order, decision, or award made and filed by the appeals board within the same time specified for reconsideration of an original order, decision, or award.

(Amended by Stats. 1965, Ch. 1513.)

Article 2. Judicial Review

(Article 2 enacted by Stats. 1937, Ch. 90.)

5950. Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which he resides, for a writ of review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration.

(Amended by Stats. 1978, Ch. 661.)

5951. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the

court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board, as certified to by it.

(Amended by Stats. 1965, Ch. 1513.)

5952. The review by the court shall not be extended further than to determine, based upon the entire record which shall be certified by the appeals board, whether:

(a) The appeals board acted without or in excess of its powers.

(b) The order, decision, or award was procured by fraud.

(c) The order, decision, or award was unreasonable.

(d) The order, decision, or award was not supported by substantial evidence.

(e) If findings of fact are made, such findings of fact support the order, decision, or award under review.

Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

(Amended by Stats. 1965, Ch. 1513.)

5953. The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board. The appeals board and each party to the action or proceeding before the appeals board shall have the right to appear in the review proceeding. Upon the hearing, the court shall enter judgment either affirming or annulling the order, decision, or award, or the court may remand the case for further proceedings before the appeals board.

(Amended by Stats. 1965, Ch. 1513.)

5954. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings in the courts under the provisions of this article. A copy of every pleading filed pursuant to the terms of this article shall be served on the appeals board and upon every party who entered an appearance in the action before the appeals board and whose interest therein is adverse to the party filing such pleading.

(Amended by Stats. 1965, Ch. 1513.)

5955. No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul any order, rule, decision, or award of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties but a writ of mandate shall lie from the Supreme Court or a court of appeal in all proper cases.

(Amended by Stats. 1967, Ch. 17.)

5956. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, decision, or award of the appeals board, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, decision, or award of the appeals board subject to review, upon the terms and conditions which it by order directs, except as provided in Article 3 of this chapter.

(Amended by Stats. 1965, Ch. 1513.)

Article 3. Undertaking on Stay Order

(Article 3 enacted by Stats. 1937, Ch. 90.)

6000. The operation of any order, decision, or award of the appeals board under the provisions of this division or any judgment entered thereon, shall not at any time be stayed by the court to which petition is made for a writ of review, unless an undertaking is executed on the part of the petitioner.

(Amended by Stats. 1982, Ch. 517, Sec. 310.)

6001. The undertaking shall provide that:

(a) The petitioner and sureties are bound in double the amount named in such order, decision, or award.

(b) If the order, decision, or award appealed from, or any part thereof, is affirmed, or the proceeding upon review is dismissed, the petitioner will pay the amount directed to be paid by the order, decision, or award or the part of such amount as to which the order, decision, or award is affirmed, and all damages and costs which are awarded against the petitioner.

(c) If the petitioner does not make such payment within 30 days after the filing with the appeals board of the remittitur from the reviewing court, judgment in favor of the adverse party may be entered on motion of the adverse party, and the undertaking shall apply to any judgment entered thereon. Such judgment may be entered in any superior court in which a certified copy of the order, decision, or award is filed, against the sureties for such amount, together with interest that is due thereon, and the damages and costs which are awarded against the petitioner. The provisions of the Code of Civil Procedure, except insofar as they are inconsistent with this division, are applicable to the undertaking.

(Amended by Stats. 1965, Ch. 1513.)

6002. The undertaking shall be filed with the appeals board. The certificate of the appeals board, or any proper officer thereof, of the filing and approval of such undertaking, is sufficient evidence of the compliance of the petitioner with the provisions of this article.

(Amended by Stats. 1965, Ch. 1513.)

Division 4.5. Workers' Compensation And Insurance: State Employees Not Otherwise Covered

(Heading of Division 4.5 amended by Stats. 1979, Ch. 373.)

Chapter 1. General Provisions

(Chapter 1 added by Stats. 1943, Ch. 45.)

6100. The purpose of this division is to effect economy, efficiency, and continuity in the public service by providing means for increasing the willingness of competent persons to assume the risk of injuries or death in State employment and for restoring experienced employees to productive work at the earliest possible moment following injury in the course of and arising out of State employment, irrespective of fault, in circumstances which make the injury or resulting death noncompensable under the provisions of Division 4 of this code.

(Added by Stats. 1943, Ch. 45.)

6101. Unless the context otherwise requires, as used in this division:

(a) "State agency" means any agency, department, division, commission, board, bureau, officer, or other authority of the State of California.

(b) "Fund" means State Compensation Insurance Fund.

(c) "Appeals board" means the Workers' Compensation Appeals Board.

(Amended by Stats. 1981, Ch. 21, Sec. 11. Effective April 18, 1981.)

Chapter 2. Direct Payments

(Chapter 2 added by Stats. 1943, Ch. 45.)

6110. Any State agency may, by appropriate action, undertake to provide hospitalization, medical treatment and indemnity, including death benefits, to its employees and to their dependents for injury or death suffered from accident, irrespective of fault, occurring in the course of and arising out of the employment with such State agency, where the injury or death is not compensable under the provisions of Division 4 of this code.

(Added by Stats. 1943, Ch. 45.)

6111. The State Compensation Insurance Fund may enter into a master agreement with the State Department of Finance to render services in accordance with the agreement in the adjustment and disposition of claims against any State agency arising under this chapter.

(Added by Stats. 1943, Ch. 45.)

6112. The master agreement shall provide for the rendition of services at a uniform rate to all State agencies.

(Added by Stats. 1943, Ch. 45.)

6113. The fund may make all expenditures, including payments to claimants for medical care or for adjustment or settlement of claims.

(Added by Stats. 1943, Ch. 45.)

6114. The agreement shall provide that the State agency whose officer or employee is a claimant shall reimburse the fund for the expenditures and for the actual cost of services rendered.

(Added by Stats. 1943, Ch. 45.)

6115. The fund may in its own name, or in the name of the State agency for which services are performed, do any and all things necessary to recover on behalf of the State agency any and all amounts which an employer might recover from third persons under Chapter 5 of Part 1 of Division 4 of this code, or which an insurer might recover pursuant to Section 11662 of the Insurance Code, including the rights to commence and prosecute actions or to intervene in other court proceedings, or to compromise claims before or after commencement of suit.

(Added by Stats. 1943, Ch. 45.)

Chapter 3. Insurance

(Chapter 3 added by Stats. 1943, Ch. 45.)

6130. In lieu of direct payments pursuant to Chapter 2 of this division, any State agency may obtain by insurance from the State Compensation Insurance Fund, if the fund accepts the risk when the application for insurance is made, otherwise from any other insurer, hospitalization, medical treatment, and indemnity, including death benefits, on behalf of its employees and of their dependents for injury or death suffered from accident, irrespective of fault, occurring in the course of and arising out of the employment with such State agency, where the injury or death is not compensable under the provisions of Division 4 of this code.

(Added by Stats. 1943, Ch. 45.)

6131. The premium for such insurance shall be a proper charge against any moneys appropriated for the support of or expenditure by such State agency. In case such State agency is supported by or authorized to expend moneys appropriated out of more than one fund, it may, with the approval of the Director of Finance, determine the proportion of such premium to be paid out of each such fund.

(Added by Stats. 1943, Ch. 45.)

Chapter 4. Benefits and Procedure

(Chapter 4 added by Stats. 1943, Ch. 45.)

6140. The hospitalization, medical treatment, and indemnity, including death benefits, provided pursuant to this division shall be the same as provided by Division 4 of this code for employees entitled to the benefits of that division.

(Added by Stats. 1943, Ch. 45.)

6141. Except as otherwise provided in this chapter, the provisions of Division 4 of this code, relating to benefits, procedure, and limitations, and all other provisions of that division, so far as they are consistent with the intent and purpose of this division, are made a part hereof the same as if set forth herein verbatim.

(Added by Stats. 1943, Ch. 45.)

6142. The provisions of Sections 3212, 3212.5, 3361, 4458, and 4800 to 4855, inclusive, of this code, as well as of other sections of Division 4 of this code, which are restrictive to particular persons or occupations, are excepted from this division and its operation.

(Added by Stats. 1943, Ch. 45.)

6143. The appeals board is vested with all power not inconsistent with Article VI of the Constitution of the State of California to hear and determine any dispute or matter arising out of an obligation under this division to provide directly, or through the medium of insurance, benefits identical with those prescribed by Division 4 of this code, with such limitations as are authorized, in the case of insurance, by Section 11657 of the Insurance Code.

(Amended by Stats. 1965, Ch. 1513.)

6144. The appeals board may try and determine controversies under this division referred to it by the parties under the provisions of Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, when such controversies are submitted to it by the signed agreement of the parties, or by the application of one party and the submission of the other to its jurisdiction, with or without an express request for arbitration.

(Amended by Stats. 1977, Ch. 579.)

6145. The state, acting by or through any state agency, or when the consent of the opposing party is obtained, shall submit to the appeals board all controversies under this division susceptible of being arbitrated.

(Amended by Stats. 1965, Ch. 1513.)

6146. In acting as arbitrator, the appeals board has all the powers which it has in compensation cases, and its findings and award upon an arbitration have the same conclusiveness and are subject to the same mode of reopening, review, and enforcement as in compensation cases.

No fee or cost shall be charged by the appeals board for acting as arbitrator.

(Amended by Stats. 1965, Ch. 1513.)

6147. No state agency, either directly or through its adjusting agency, the State Compensation Insurance Fund, shall pay or provide any benefit authorized by this division unless and until the claimant makes and delivers to such state agency or to the fund an agreement in writing that if he, or his dependents in the event of his death, elects or elect to bring suit against the state with respect to the injury or death, except an action before the appeals board pursuant to the provisions of this division, or an action against the state for damages resulting from the negligence of an employee of another state agency, he or they will allow, and take all proper measures to effect, a credit to the reasonable value of all benefits which he or they have received under the provisions of this division, deductible from any verdict or judgment obtained

in such suit, and from the date of commencement of suit will forego further benefits under this division.

(Amended by Stats. 1965, Ch. 1513.)

6148. The insurer, when insurance exists, shall not pay or provide any benefit authorized by this division unless and until the claimant makes and delivers to the insurer an agreement in writing that if he, or his dependents in the event of his death, elects or elect to bring suit against the state or the insurer with respect to the injury or death, except an action before the appeals board pursuant to the provisions of this division, or an action against the state for damages resulting from the negligence of an employee of another state agency, he or they will allow, and take all proper measures to effect, a credit to the reasonable value of all benefits which he or they have received under the provisions of this division, deductible from any verdict or judgment obtained in such suit, and from the date of commencement of suit will forego further benefits under such insurance.

(Amended by Stats. 1965, Ch. 1513.)

6149. Nothing shall preclude an employee from negotiating the agreement mentioned in Sections 6147 and 6148 prior to the occurrence of injury.

(Added by Stats. 1943, Ch. 45.)

Division 4.7. Retraining And Rehabilitation

(Division 4.7 added by Stats. 1971, Ch. 1506.)

6200. Every public agency, its insurance carrier, and the State Department of Rehabilitation shall jointly formulate procedures for the selection and orderly referral of injured full-time public employees who may be benefited by rehabilitation services and retrained for other positions in public service. The State Department of Rehabilitation shall cooperate in both designing and monitoring results of rehabilitation programs for the disabled employees. The primary purpose of this division is to encourage public agencies to reemploy their injured employees in suitable and gainful employment.

(Added by Stats. 1971, Ch. 1506.)

6201. The employer or insurance carrier shall notify the injured employee of the availability of rehabilitation services in those cases where there is continuing disability of 28 days and beyond. Notification shall be made at the time the employee is paid retroactively for the first day of disability (in cases of 28 days of continuing disability or hospitalization) which has previously been uncompensated. A copy of said notification shall be forwarded to the State Department of Rehabilitation.

(Added by Stats. 1971, Ch. 1506.)

6202. The initiation of a rehabilitation plan shall be the joint responsibility of the injured employee, and the employer or the insurance carrier.

(Added by Stats. 1971, Ch. 1506.)

6203. If a rehabilitation plan requires an injured employee to attend an educational or medical facility away from his home, the injured employee shall be paid a reasonable and necessary subsistence allowance in addition to temporary disability indemnity. The subsistence allowance shall be regarded neither as indemnity nor as replacement for lost earnings, but rather as an amount reasonable and necessary to sustain the employee. The determination of need in a particular case shall be established as part of the rehabilitation plan.

(Amended by Stats. 1972, Ch. 715.)

6204. An injured employee agreeing to a rehabilitation plan shall cooperate in carrying it out. On his unreasonable refusal to comply with the provisions of the rehabilitation plan, the injured employee's rights to further subsistence shall be suspended until compliance is obtained, except that the payment of temporary or permanent disability indemnity, which would be payable regardless of the rehabilitation plan, shall not be suspended.

(Amended by Stats. 1972, Ch. 715.)

6205. The injured employee may agree with his employer or insurance carrier upon a rehabilitation plan without submission of such plan for approval to the State Department of Rehabilitation. Provision of service under such plans shall be at no cost to the State General Fund.

(Added by Stats. 1971, Ch. 1506.)

6206. The injured employee shall receive such medical and vocational rehabilitative services as may be reasonably necessary to restore him to suitable employment.

(Added by Stats. 1971, Ch. 1506.)

6207. The injured employee's rehabilitation benefit is an additional benefit and shall not be converted to or replace any workmen's compensation benefit available to him.

(Added by Stats. 1971, Ch. 1506.)

6208. The initiation and acceptance of a rehabilitation program shall be voluntary and not compulsory upon the employer, the insurance carrier, or the injured employee.

(Added by Stats. 1972, Ch. 715.)

Division 5. Safety In Employment

(Division 5 enacted by Stats. 1937, Ch. 90.)

Part 1. Occupational Safety And Health

(Heading of Part 1 amended by Stats. 1973, Ch. 993.)

Chapter 1. Jurisdiction and Duties

(Heading of Chapter 1 amended by Stats. 1973, Ch. 993.)

6300. The California Occupational Safety and Health Act of 1973 is hereby enacted for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health.

(Repealed and added by Stats. 1973, Ch. 993.)

6301. The definitions set forth in this chapter shall govern the construction and interpretation of this part.

(Repealed and added by Stats. 1973, Ch. 993.)

6302. As used in this division:

(a) "Director" means the Director of Industrial Relations.

(b) "Department" means the Department of Industrial Relations.

(c) "Insurer" includes the State Compensation Insurance Fund and any private company, corporation, mutual association, and reciprocal or interinsurance exchange, authorized under the laws of this state to insure employers against liability for compensation under this part and under Division 4 (commencing with Section 3201), and any employer to whom a certificate of consent to self-insure has been issued.

(d) "Division" means the Division of Occupational Safety and Health.

(e) "Standards board" means the Occupational Safety and Health Standards Board, within the department.

(f) "Appeals board" means the Occupational Safety and Health Appeals Board, within the department.

(g) "Aquaculture" means a form of agriculture as defined in Section 17 of the Fish and Game Code.

(h) "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway.

(i) "Serious exposure" means any exposure of an employee to a hazardous substance when the exposure occurs as a result of an incident, accident, emergency, or exposure over time and is in a degree or amount sufficient to create a substantial probability that death or serious physical harm in the future could result from the exposure.

(Amended by Stats. 1984, Ch. 1317, Sec. 1.)

6303. (a) "Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division.

(b) "Employment" includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service.

(c) "Employment," for purposes of this division only, also includes volunteer firefighting when covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(d) Subdivision (c) shall become operative on January 1, 2004.

(Amended by Stats. 2002, Ch. 368, Sec. 1. Effective September 5, 2002.)

6303.5. Nothing in this division shall be construed to limit the jurisdiction of the state over any employmment or place of employment by reason of the exercise of occupational safety and health jurisdiction by any federal agency if federal jurisdiction is being exercised under a federal law which expressly authorizes concurrent state jurisdiction over occupational safety or health issues.

(Added November 8, 1988, by initiative Proposition 97. Note: Prop. 97 is titled the California Occupational Safety and Health Restoration Act.)

6304. "Employer" shall have the same meaning as in Section 3300.

(Amended by Stats. 1971, Ch. 1751.)

6304.1. (a) "Employee" means every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment.

(b) "Employee" also includes volunteer firefighters covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

(c) Subdivision (b) shall become operative on January 1, 2004.

(d) This act does not affect claims that arose pursuant to Division 5 of this code between January 1, 2002, and the effective date of this act.

(Amended by Stats. 2002, Ch. 368, Sec. 2. Effective September 5, 2002.)

6304.2. Notwithstanding Section 6413, and except as provided in Sections 6304. 3 and 6304.4, any state prisoner engaged in correctional industry, as defined by the Department of Corrections, shall be deemed to be an "employee," and the Department of Corrections shall be deemed to be an "employer," with regard to such prisoners for the purposes of this part.

(Added by Stats. 1977, Ch. 1215.)

6304.3. (a) A Correctional Industry Safety Committee shall be established in accordance with Department of Corrections administrative procedures at each facility maintaining a correctional industry, as defined by the Department of Corrections. The Division of Occupational Safety and Health shall promulgate, and the Department of Corrections shall implement, regulations concerning the duties and functions which shall govern the operation of each such committee.

(b) All complaints alleging unsafe or unhealthy working conditions in a correctional industry shall initially be directed to the Correctional Industry Safety Committee of the facility prison. The committee shall attempt to resolve all complaints.

If a complaint is not resolved by the committee within 15 calendar days, the complaint shall be referred by the committee to the division where it shall be reviewed. When the division receives a complaint which, in its determination, constitutes a bona fide allegation of a safety or health violation, the division shall summarily investigate the same as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, as defined in Section 6309, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation.

(c) Except as provided in subdivision (b) and in Section 6313, the inspection or investigation of a facility maintaining a correctional industry, as defined by the Department of Corrections, shall be discretionary with the division.

(d) Notwithstanding Section 6321, the division may give advance notice of an inspection or investigation and may postpone the same if such action is necessary for the maintenance of security at the facility where the inspection or investigation is to be held, or for insuring the safety and health of the division's representative who will be conducting such inspection or investigation.

(Amended by Stats. 1980, Ch. 676.)

6304.4. A prisoner engaged in correctional industry, as defined by the Department of Corrections, shall not be considered an employee for purposes of the provisions relating to appeal proceedings set forth in Chapter 7 (commencing with Section 6600).

(Amended by Stats. 1983, Ch. 142, Sec. 111.)

6304.5. It is the intent of the Legislature that the provisions of this division, and the occupational safety and health standards and orders promulgated under this code, are applicable to proceedings against employers for the exclusive purpose of maintaining and enforcing employee safety.

Neither the issuance of, or failure to issue, a citation by the division shall have any application to, nor be considered in, nor be admissible into, evidence in any personal injury or wrongful death action, except as between an employee and his or her own employer. Sections 452 and 669 of the Evidence Code shall apply to this division and to occupational safety and health standards

adopted under this division in the same manner as any other statute, ordinance, or regulation. The testimony of employees of the division shall not be admissible as expert opinion or with respect to the application of occupational safety and health standards. It is the intent of the Legislature that the amendments to this section enacted in the 1999–2000 Regular Session shall not abrogate the holding in Brock v. State of California (1978) 81 Cal.App.3d 752.

(Amended by Stats. 1999, Ch. 615, Sec. 2. Effective January 1, 2000.)

6305. (a) "Occupational safety and health standards and orders" means standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of Division 1 and general orders heretofore adopted by the Industrial Safety Board or the Industrial Accident Commission.

(b) "Special order" means any order written by the chief or the chief's authorized representative to correct an unsafe condition, device, or place of employment which poses a threat to the health or safety of an employee and which cannot be made safe under existing standards or orders of the standards board. These orders shall have the same effect as any other standard or order of the standards board, but shall apply only to the employment or place of employment described in the written order of the chief's authorized representative.

(Amended by Stats. 1981, Ch. 714, Sec. 319.)

6306. (a) "Safe," "safety," and "health" as applied to an employment or a place of employment mean such freedom from danger to the life, safety, or health of employees as the nature of the employment reasonably permits.

(b) "Safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger, including the danger of exposure to potentially injurious levels of ionizing radiation or potentially injurious quantities of radioactive materials.

(Repealed and added by Stats. 1973, Ch. 993.)

6307. The division has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment.

(Repealed and added by Stats. 1973, Ch. 993.)

6307.1. The State Department of Health Services shall assist the division in the enforcement of Section 25910 of the Health and Safety Code in the manner prescribed by a written agreement between the State Department of Health Services and the Department of Industrial Relations, pursuant to Section 144.

(Amended by Stats. 1980, Ch. 676.)

6308. The division, in enforcing occupational safety and health standards and orders and special orders may do any of the following:

(a) Declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

(b) Enforce Section 25910 of the Health and Safety Code and standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, for the installation, use, maintenance, and operation of reasonable uniform safety devices, safeguards, and other means or methods of protection, which are necessary to carry out all laws and lawful standards or special orders relative to the protection of the life and safety of employees in employments and places of employment.

(c) Require the performance of any other act which the protection of the life and safety of the employees in employments and places of employment reasonably demands.

An employer may request a hearing on a special order or action ordered pursuant to this section, at which the employer, owner, or any other person may appear. The appeals board shall conduct the hearing at the earliest possible time.

All orders, rules, regulations, findings, and decisions of the division made or entered under this part, except special orders and action orders, may be reviewed by the Supreme Court and the courts of appeal as may be provided by law.

(Amended by Stats. 1984, Ch. 1138, Sec. 1.)

6308.5. Hearings conducted by the division pursuant to this part shall give any affected employer or other affected person the opportunity to submit facts or arguments, but may be conducted informally, either orally or in writing.

(Added by Stats. 1974, Ch. 1284.)

6309. (a) If the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the employment or place of employment, with or without notice or hearings. However, if the division receives a complaint from an employee, an employee's representative, including, but not limited to, an attorney, health or safety professional, union representative, or government agency representative, or an employer of an employee directly involved in an unsafe place of employment, that his or her employment or place of employment is not safe, it shall, with or without notice or hearing, summarily investigate the complaint as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation. The division shall attempt to determine the period of time in the future that the complainant believes the unsafe condition may continue to exist, and shall allocate inspection resources so as to respond first to those situations in which time is of the essence. For purposes of this section, a complaint is deemed to allege a serious violation if the division determines that the complaint charges that there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in a place of employment. When a complaint charging a serious violation is received from a state or local prosecutor, or a local law enforcement agency, the division shall summarily investigate the employment or place of employment within 24 hours of receipt of the complaint. All other complaints are deemed to allege nonserious violations. The division may enter and serve any necessary order relative thereto. The division is not required to respond to a complaint within this period where, from the facts stated in the complaint, it determines that the complaint is intended to willfully harass an employer or is without any reasonable basis.

(b) The division shall keep complete and accurate records of all complaints, whether verbal or written, and shall inform the complainant, whenever his or her identity is known, of any action taken by the division in regard to the subject matter of the complaint, and the reasons for the action, within 14 calendar days of taking any action. The records of the division shall include the dates on which any action was taken on the complaint, or the reasons for not taking any action on the complaint. The

division shall, pursuant to authorized regulations, conduct an informal review of any refusal by a representative of the division to issue a citation with respect to an alleged violation. The division shall furnish the employee or the representative of employees requesting the review a written statement of the reasons for the division's final disposition of the case.

(c) The name of a person who submits to the division a complaint regarding the unsafe condition of an employment or place of employment shall be kept confidential by the division, unless that person requests otherwise.

(d) The division shall annually compile and release on its Internet Web site data pertaining to complaints received and citations issued.

(e) The requirements of this section do not relieve the division of its requirement to inspect and assure that all places of employment are safe and healthful for employees. The division shall maintain the capability to receive and act upon complaints at all times. However, the division shall prioritize investigations of reports of accidents involving death or serious injury or illness and complaints that allege a serious violation over investigations of complaints that allege a nonserious violation.

(Amended by Stats. 2015, Ch. 25, Sec. 43. Effective June 24, 2015.)

6310. (a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

(1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative.

(2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her.

(3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) An employer, or a person acting on behalf of the employer, shall not retaliate against an employee because the employee is a family member of a person who has, or is perceived to have, engaged in any acts protected by this section.

(d) For purposes of this section, "employer" or "a person acting on behalf of the employer" includes, but is not limited to, a client employer as defined in paragraph (1) of subdivision (a) of Section 2810.3 and an employer listed in subdivision (b) of Section 6400.

(Amended by Stats. 2015, Ch. 792, Sec. 4. Effective January 1, 2016.)

6311. No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

(Amended by Stats. 1985, Ch. 1479, Sec. 6.)

6312. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of Section 6310 or 6311 may file a complaint with the Labor Commissioner pursuant to Section 98.7.

(Amended by Stats. 1985, Ch. 1479, Sec. 7.)

6313. (a) The division shall investigate the causes of any employment accident that is fatal to one or more employees or that results in a serious injury or illness, or a serious exposure, unless it determines that an investigation is unnecessary. If the division determines that an investigation of an accident is unnecessary, it shall summarize the facts indicating that the accident need not be investigated and the means by which the facts were determined. The division shall establish guidelines for determining the circumstances under which an investigation of these accidents and exposures is unnecessary.

(b) The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment, or which directly or indirectly arises from or is connected with the maintenance or operation of the employment or place of employment, and shall issue any orders necessary to eliminate the causes and to prevent reoccurrence. The orders may not be admitted as evidence in any action for damages, or any proceeding to recover compensation, based on or arising out of injury or death caused by the accident or illness.

(Amended by Stats. 2002, Ch. 885, Sec. 3. Effective January 1, 2003.)

6313.5. The division, after consultation with the Contractors' State License Board, shall transmit to the Contractors' State License Board copies of any citations or other actions taken by the division against a contractor as defined in the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code).

(Amended by Stats. 2016, Ch. 372, Sec. 4. Effective January 1, 2017.)

6314. (a) To make an investigation or inspection, the chief of the division and all qualified divisional inspectors and investigators authorized by him or her shall, upon presenting appropriate credentials to the employer, have free access to any place of employment to investigate and inspect during regular working hours, and at other reasonable times when necessary for the protection of safety and health, and within reasonable limits and in a reasonable manner. The chief or his or her authorized representative may, during the course of any investigation or inspection, obtain any statistics, information, or any physical materials in the possession of the employer that are directly related to the purpose of the investigation or inspection, conduct any tests necessary to the investigation or inspection, and take photographs. Photographs taken by the division during the

course of any investigation or inspection shall be considered to be confidential information pursuant to the provisions of Section 6322, and shall not be deemed to be public records for purposes of the California Public Records Act.

(b) If permission to investigate or inspect the place of employment is refused, or the facts or circumstances reasonably justify the failure to seek permission, the chief or his or her authorized representative may obtain an inspection warrant pursuant to the provisions of Title 13 (commencing with Section 1822.50) of the Code of Civil Procedure. Cause for the issuance of a warrant shall be deemed to exist if there has been an industrial accident, injury, or illness reported, if any complaint that violations of occupational safety and health standards exist at the place of employment has been received by the division, or if the place of employment to be inspected has been chosen on the basis of specific neutral criteria contained in a general administrative plan for the enforcement of this division.

(c) The chief and his or her authorized representatives may issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, and physical materials, administer oaths, examine witnesses under oath, take verification or proof of written materials, and take depositions and affidavits for the purpose of carrying out the duties of the division.

(d) In the course of any investigation or inspection of an employer or place of employment by an authorized representative of the division, a representative of the employer and a representative authorized by his or her employees shall have an opportunity to accompany him or her on the tour of inspection. Any employee or employer, or their authorized representatives, shall have the right to discuss safety and health violations or safety and health problems with the inspector privately during the course of an investigation or inspection. Where there is no authorized employee representative, the chief or his or her authorized representatives shall consult with a reasonable number of employees concerning matters of health and safety of the place of employment.

(e) During any investigation of an industrial accident or occupational illness conducted by the division pursuant to the provisions of Section 6313, the chief or his or her authorized representative may issue an order to preserve physical materials or the accident site as they were at the time the accident or illness occurred if, in the opinion of the division, it is necessary to do so in order to determine the cause or causes of the accident or illness, and the evidence is in potential danger of being removed, altered, or tampered with. Under these circumstances, the division shall issue that order in a manner that will avoid, to the extent possible, any interference with normal business operations.

A conspicuous notice that an order has been issued shall be prepared by the division and shall be posted by the employer in the area or on the article to be preserved. The order shall be limited to the immediate area and the machines, devices, apparatus, or equipment directly associated with the accident or illness.

Any person who knowingly violates an order issued by the division pursuant to this subdivision shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000).

(Amended by Stats. 1993, Ch. 998, Sec. 1. Effective January 1, 1994.)

6314.1. (a) The division shall establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. The employers shall be identified from any or all of the following data sources: the California Work Injury and Illness program, the Occupational Injuries and Illness Survey, the federal hazardous employers' list, experience modification and other relevant data maintained and furnished by all rating organizations as defined in Section 11750.1 of the Insurance Code, histories of violations of Occupational Safety and Health Act standards, and any other source deemed to be appropriate that identifies injury and illness rates.

(b) The division shall establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis. The division may send a letter to the high hazard employers who are identified pursuant to this section informing them of their status and directing them to submit a plan, including the establishment of joint labor-management health and safety committees, within a time determined by the division for reducing their occupational injury and illness rates. Employers who submit plans that meet the requirements of the division may be placed on a secondary inspection schedule. Employers on that schedule shall be inspected on a random basis as determined by the division. Employers who do not submit plans meeting the requirements of the division within the time specified by the division shall be placed on the primary inspection list. Every employer on the primary inspection list shall be subject to an inspection. The division shall employ sufficient personnel to meet minimum federal targeted inspection standards.

(c) The division shall establish and maintain regional plans for allocating the division's resources for the targeted inspection program in addition to the inspections required or authorized in Sections 6309, 6313, and 6320. Each regional plan shall focus on industries selected from the targeted inspection program as well as any other scheduled inspections that the division determines to be appropriate to the region, including the cleanup of hazardous waste sites. All targeted inspections shall be conducted on a priority basis, targeting the worst employers first.

(d) In order to maximize the impact of the regional plans, the division shall coordinate its education, training, and consulting services with the priorities established in the regional plans.

(Repealed and added by Stats. 1993, Ch. 121, Sec. 68. Effective July 16, 1993.)

6314.5. (a) Every inspection conducted by the division shall include an evaluation of the employer's injury prevention program established pursuant to Section 6401.7. The division shall evaluate injury prevention programs using the criteria for substantial compliance determined by the standards board. The evaluation shall include interviews with a sample of employees and the members of any employer-employee occupational safety and health committee. In any inspection which includes work for which a permit is required pursuant to Section 6500 and for which a permit has been issued pursuant to Section 6502, the evaluation of the employer's injury prevention program shall be limited to the implementation of the plan approved by the division in the issuance of the permit. Before any inspection is concluded, the division shall notify the employer of the services available from the department to assist the employer to establish, maintain, improve, and evaluate the employer's injury prevention program.

(b) Inspections also shall include an evaluation of the following:

(1) The condition or conditions alleged in the complaint if the inspection is conducted pursuant to Section 6309.

(2) The condition or conditions involved in the accident if the inspection is conducted pursuant to Section 6313.

(3) The condition or conditions involving work for which a permit is required pursuant to Section 6500, for which notification of asbestos related work is required pursuant to Section 6501.5, or for which a report of use of a carcinogen is required pursuant to Section 9030.

(4) The condition or conditions related to significant safety or health hazards in the industries identified in the regional plans developed pursuant to Section 6314.1.

(5) The condition or conditions involved in abatement of previous violations, special orders, or action orders if the inspection is conducted pursuant to Section 6320.

(c) The scope of any inspection may be expanded beyond the evaluations specified in subdivisions (a) and (b) whenever, in the opinion of the division, a more complete inspection is warranted.

(Added by Stats. 1989, Ch. 1369, Sec. 5. Effective October 2, 1989.)

6315. (a) There is within the division a Bureau of Investigations. The bureau is responsible for directing accident investigations involving violations of standards, orders, special orders, or Section 25910 of the Health and Safety Code, in which there is a serious injury to five or more employees, death, or request for prosecution by a division representative. The bureau shall review inspection reports involving a serious violation where there have been serious injuries to one to four employees or a serious exposure, and may investigate those cases in which the bureau finds criminal violations may have occurred. The bureau is responsible for preparing cases for the purpose of prosecution, including evidence and findings.

(b) The division shall provide the bureau with all of the following:

(1) All initial accident reports.

(2) The division's inspection report for any inspection involving a serious violation where there is a fatality, and the reports necessary for the bureau's review required pursuant to subdivision (a).

(3) Any other documents in the possession of the division requested by the bureau for its review or investigation of any case or which the division determines will be helpful to the bureau in its investigation of the case.

(c) The supervisor of the bureau is the administrative chief of the bureau, and shall be an attorney.

(d) The bureau shall be staffed by as many attorneys and investigators as are necessary to carry out the purposes of this chapter. To the extent possible, the attorneys and investigators shall be experienced in criminal law.

(e) The supervisor of the bureau and bureau representatives designated by the supervisor have a right of access to all places of employment necessary to the investigation, may collect any evidence or samples they deem necessary to an investigation, and have all of the powers enumerated in Section 6314.

(f) The supervisor of the bureau and bureau representatives designated by the supervisor may serve all processes and notices throughout the state.

(g) In any case where the bureau is required to conduct an investigation, and in which there is a serious injury or death, the results of the investigation shall be referred in a timely manner by the bureau to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the bureau determines that there is legally insufficient evidence of a violation of the law. If the bureau determines that there is legally insufficient evidence of a violation of the law, the bureau shall notify the appropriate prosecuting authority, if the prosecuting authority requests notice.

(h) The bureau may communicate with the appropriate prosecuting authority at any time the bureau deems appropriate.

(i) Upon the request of a county district attorney, the department may develop a protocol for the referral of cases that may involve criminal conduct to the appropriate prosecuting authority in lieu of or in cooperation with an investigation by the bureau. The protocol shall provide for the voluntary acceptance of referrals after a review of the case by the prosecuting authority. In cases accepted for investigation by the prosecuting authority, the protocol shall provide for cooperation between the prosecuting authority, the division, and the bureau. Where a referral is declined by the prosecuting authority, the bureau shall comply with subdivisions (a) to (h), inclusive.

(Amended by Stats. 2003, Ch. 884, Sec. 7. Effective January 1, 2004.)

6315.3. The bureau shall, not later than February 15, annually submit to the division for submission to the director a report on the activities of the bureau, including, but not limited to, the following:

(a) Totals of each type of report provided the bureau under each category in subdivision (b) of Section 6315.

(b) Totals of each type of case reflecting the number of investigations and court cases in progress at the start of the calendar year being reported, investigations completed in the calendar year, cases referred to appropriate prosecuting authorities in the calendar year, and investigations and court cases in progress at the end of the calendar year. The types of cases shall include the following:

(1) Those that the bureau is required to investigate, divided into fatalities, serious injuries to five or more employees, and requests for prosecution from a division representative.

(2) Those that were initiated by the bureau following the review required in subdivision (a) of Section 6315, divided into serious injuries to fewer than five employees and serious exposures.

(c) A summary of the dispositions in the calendar year of cases referred by the bureau to appropriate prosecuting authorities. The summary shall be divided into the types of cases, as described in subdivision (b), and shall show at least the violation, the statute for which the case was referred for prosecution, and the dates of referral to the bureau for investigation, referral from the bureau for prosecution, and the final court action if the case was prosecuted.

(d) A summary of investigations completed in the calendar year that did not result in a referral for prosecution, divided into the types of cases as described in subdivision (b), showing the violation and the reasons for nonreferral.

(e) A summary of the use of the bureau's resources in accomplishing the bureau's mission.

(Amended by Stats. 2006, Ch. 538, Sec. 493. Effective January 1, 2007.)

6315.5. All occupational safety and health standards and orders, rules, regulations, findings, and decisions of the division made and entered pursuant to this part are admissible as evidence in any prosecution for the violation of any provision of this part, and shall, in every such prosecution, be presumed to be reasonable and lawful and to fix a reasonable and proper standard and requirement of safety unless, prior to the institution of the prosecution for such violation, proceedings for a hearing on a special order are instituted, or a petition is filed under Section 11426 of the Government Code.

(Added by Stats. 1973, Ch. 993.)

6316. Except as limited by Chapter 6 (commencing with Section 140) of Division 1, nothing in this part shall deprive the governing body of any county, city, or public corporation, board,

or department, of any power or jurisdiction over or relative to any place of employment.

(Repealed and added by Stats. 1973, Ch. 993.)

6317. If, upon inspection or investigation, the division believes that an employer has violated Section 25910 of the Health and Safety Code or any standard, rule, order, or regulation established pursuant to Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, or any standard, rule, order, or regulation established pursuant to this part, it shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the alleged violation. The period specified for abatement shall not commence running until the date the citation or notice is received by certified mail and the certified mail receipt is signed, or if not signed, the date the return is made to the post office. If the division officially and directly delivers the citation or notice to the employer, the period specified for abatement shall commence running on the date of the delivery.

A "notice" in lieu of citation may be issued with respect to violations found in an inspection or investigation which meet either of the following requirements:

(1) The violations do not have a direct relationship upon the health or safety of an employee.

(2) The violations do not have an immediate relationship to the health or safety of an employee, and are of a general or regulatory nature. A notice in lieu of a citation may be issued only if the employer agrees to correct the violations within a reasonable time, as specified by the division, and agrees not to appeal the finding of the division that the violations exist. A notice issued pursuant to this paragraph shall have the same effect as a citation for purposes of establishing repeat violations or a failure to abate. Every notice shall clearly state the abatement period specified by the division, that the notice may not be appealed, and that the notice has the same effect as a citation for purposes of establishing a repeated violation or a failure to abate. The employer shall indicate agreement to the provisions and conditions of the notice by his or her signature on the notice.

Under no circumstances shall a notice be issued in lieu of a citation if the violations are serious, repeated, willful, or arise from a failure to abate.

The director shall prescribe guidelines for the issuance of these notices.

The division may impose a civil penalty against an employer as specified in Chapter 4 (commencing with Section 6423) of this part. A notice in lieu of a citation may not be issued if the number of first instance violations found in the inspection (other than serious, willful, or repeated violations) is 10 or more violations.

No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation.

The director shall prescribe procedures for the issuance of a citation or notice.

The division shall prepare and maintain records capable of supplying an inspector with previous citations and notices issued to an employer.

(Amended by Stats. 1991, Ch. 599, Sec. 1. Effective October 7, 1991.)

6317.5. (a) If, upon inspection or investigation, the division finds that an employer has falsified any materials posted in the workplace or distributed to employees related to the California Occupational Safety and Health Act, the division shall issue a citation to the employer.

(b) Each citation issued pursuant to this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director.

(c) Any employer served with a citation pursuant to subdivision (a) may appeal to the appeals board pursuant to the provisions of Chapter 7 (commencing with Section 6600). The appeal shall be subject to the timeframes and procedures set forth in that chapter.

(d) The provisions of this section are in addition to, and not in lieu of, all other criminal penalties and civil remedies that may be applicable to any act leading to issuance of a citation pursuant to this section.

(Added by Stats. 1993, Ch. 580, Sec. 2. Effective January 1, 1994.)

6317.7. If, upon inspection or investigation, the division finds no violations pursuant to this chapter, the division with reasonable promptness shall issue a written notice to the employer specifying the areas inspected and stating that no violations were found.

The director shall prescribe procedures for the issuance of this notice.

(Added by Stats. 1993, Ch. 580, Sec. 3. Effective January 1, 1994.)

6318. (a) Each citation issued under Section 6317, and each special order or action ordered pursuant to Section 6308, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, at or near each place a violation referred to in the citation or order occurred. All postings shall be maintained for three working days, or until the unsafe condition is abated, whichever is longer. Following each investigation of an industrial accident or occupational illness, if no violations are found, the employer shall post a notice prepared by the division so indicating for three working days.

(b) When the division verifies abatement of a serious violation or an order at the time of inspection or upon reinspection, the employer shall post a notice prepared by the division so indicating for three working days. In all other cases of abatement of serious violations, the employer shall post the signed statement confirming abatement prepared pursuant to Section 6320.

(Amended by Stats. 1989, Ch. 1369, Sec. 6. Effective October 2, 1989.)

6319. (a) If, after an inspection or investigation, the division issues a citation pursuant to Section 6317 or an order pursuant to Section 6308, it shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the citation or order, and that the employer has 15 working days from receipt of the notice within which to notify the appeals board that he or she wishes to contest the citation or order for any reason set forth in Section 6600 or 6600.5.

(b) An employer served by certified mail with a notice of civil penalty may appeal to the appeals board within 15 working days from receipt of that notice for any reason set forth in Section 6600. If the citation is issued for a violation involving the condition or operation of any machine, device, apparatus, or equipment, and a person other than the employer is obligated to the employer to repair the machine, device, apparatus, or equipment and to pay any penalties assessed against the employer, the other person may appeal to the appeals board within 15 working days of the receipt of the citation by the employer for any reasons set forth in Section 6600.

(c) The director shall promulgate regulations covering the assessment of civil penalties under this chapter which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The size of the business of the employer being charged.

(2) The gravity of the violation.

(3) The good faith of the employer, including timely abatement.

(4) The history of previous violations.

(d) Notwithstanding subdivision (c), if serious injury, illness, exposure, or death is caused by a serious, willful, or repeated violation, or by a failure to correct a serious violation within the time permitted for its correction, the penalty shall not be reduced for a reason other than the size of the business of the employer being charged. Whenever the division issues a citation for a violation covered by this subdivision, it shall notify the employer of its determination that serious injury, illness, exposure or death was caused by the violation and shall, upon request, provide the employer with a copy of the inspection report.

(e) The employer is not liable for a civil penalty under this part for any citation issued by a division representative providing consulting services pursuant to Sections 6354 and 6355.

(f) Whenever a citation of a self-insured employer for a willful or repeat serious violation of the standard adopted pursuant to Section 6401.7 becomes final, the division shall notify the director so that a hearing may be held to determine whether good cause exists to revoke the employer's certificate of consent to self-insure as provided in Section 3702.

(g) Based upon the evidence, the division may propose appropriate modifications concerning the characterization of violations and corresponding modifications to civil penalties as a result thereof. For serious violations, the division shall not grant a proposed modification to civil penalties for abatement or credit for abatement unless the employer has done any of the following:

(1) Abated the violation at the time of the initial inspection.

(2) Abated the violation at the time of a subsequent inspection prior to the issuance of a citation.

(3) Submitted a signed statement under penalty of perjury and supporting evidence, when necessary to prove abatement, in accordance with subdivision (b) of Section 6320.

(Amended by Stats. 2015, Ch. 303, Sec. 379. Effective January 1, 2016.)

6319.3. (a) Except as provided in subdivision (b) of this section and subdivision (j) of Section 6401.7, no civil penalty shall be assessed against any new employer in the state for a violation of any standard developed pursuant to subdivision (a) of Section 6401.7 for a period of one year after the date the new employer establishes a business in the state.

(b) Subdivision (a) shall only apply to an employer who has made a good faith effort to comply with any standard developed pursuant to subdivision (a) of Section 6401.7, but shall not apply if the employer is found to have committed a serious, willful, or repeated violation of that standard, or fails to abate the violation and is assessed a penalty pursuant to Section 6430.

(Added by Stats. 1993, Ch. 928, Sec. 1. Effective January 1, 1994.)

6319.5. Upon a showing by an employer of a good-faith effort to comply with the abatement requirement of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the division, after an opportunity for a hearing, shall issue an order affirming or modifying the abatement requirements in such citation.

(Added by Stats. 1973, Ch. 993.)

6320. (a) If, after inspection or investigation, the division issues a special order, order to take special action, or a citation for a serious violation, and if at the time of inspection the order is not complied with or the violation is not abated, the division shall conduct a reinspection in the following cases:

(1) All inspections or investigations involving a serious violation of a standard adopted pursuant to Section 6401.7, a special order or order to take special action, serious violations of those orders, and serious violations characterized as repeat or willful or with abatement periods of less than six days. These reinspections shall be conducted at the end of the period fixed for compliance with the order or abatement of the violation or within 30 days thereafter.

(2) At least 20 percent of the inspections or investigations involving a serious violation not otherwise scheduled for reinspection. These inspections shall be randomly selected and shall be conducted at the end of the period fixed for abatement of the violation or within a reasonable time thereafter.

(b) Whenever a serious violation is not abated at the time of the initial or subsequent inspection, the division shall require the employer to submit a signed statement, with supporting evidence, where necessary to prove abatement, under penalty of perjury, that he or she has complied with the abatement terms within the period fixed for abatement of the violation. The division may grant a modification pursuant to subdivision (g) of Section 6319 only if the employer has abated the violation at the time of the initial or subsequent inspection or the statement, signed under penalty of perjury, and supporting evidence are received within 10 working days after the end of the period fixed for abatement. At no time shall the period for abatement be fixed prior to the issuance of a citation. The submission of a signed abatement statement shall not be considered as evidence of a violation during an appeal. The division shall include on the initial notice of civil penalty a clear warning of reinspection for failure to submit the required statement in the time allotted, and of an additional, potentially substantial monetary penalty for failure to abate the violation. If the division fails to receive evidence of abatement or the statement within 10 working days after the end of the abatement period, the division shall notify the employer that the additional civil penalty for failure to abate, as provided in Section 6430, will be assessed retroactive to the end of the abatement period unless the employer can provide sufficient evidence that the violation was abated prior to that date. The division shall conduct a reinspection of serious violations within 45 days following the end of the abatement period whenever it still has no evidence of abatement.

(Amended by Stats. 2014, Ch. 497, Sec. 2. Effective January 1, 2015.)

6321. No person or employer shall be given advance warning of an inspection or investigation by any authorized representative of the division unless authorized under provisions of this part.

Only the chief or, in the case of his absence, his authorized representatives shall have the authority to permit advance notice of an inspection or investigation. The director shall, as soon as practicable, set down limitations under which an employer may be granted advance notice by the chief. In no case, except an imminent danger to the health or safety of an employee or employees, is advance notice to be authorized when the investigation or inspection is to be made as a result of an employee complaint.

Any person who gives advance notice of any inspection to be conducted, without authority from the chief or his designees, is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or by both.

(Repealed and added by Stats. 1973, Ch. 993.)

6322. All information reported to or otherwise obtained by the chief or his representatives in connection with any inspection

or proceeding of the division which contains or which might reveal a trade secret referred to in Section 1905 of Title 18 of the United States Code, or other information that is confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall be considered confidential, except that such information may be disclosed to other officers or employees of the division concerned with carrying out the purposes of the division or when relevant in any proceeding of the division. The appeals board, standards board, the courts, or the director shall in any such proceeding issue such orders as may be appropriate to protect the confidentiality of trade secrets. Violation of this section is a misdemeanor.

(Added by Stats. 1973, Ch. 993.)

6323. If the condition of any employment or place of employment or the operation of any machine, device, apparatus, or equipment constitutes a serious menace to the lives or safety of persons about it, the division may apply to the superior court of the county in which such place of employment, machine, device, apparatus, or equipment is situated, for an injunction restraining the use or operation thereof until such condition is corrected.

(Added by Stats. 1973, Ch. 993.)

6324. The application to the superior court accompanied by affidavit showing that such place of employment, machine, device, apparatus, or equipment is being operated in violation of a safety order or standard, or in violation of Section 25910 of the Health and Safety Code, and that such use or operation constitutes a menace to the life or safety of any person employed thereabout and accompanied by a copy of the order or standard applicable thereto is a sufficient prima facie showing to warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the division as a prerequisite to the granting of any restraining order.

(Amended by Stats. 1979, Ch. 373.)

6325. When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This section shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(Added by Stats. 1973, Ch. 993.)

6325.5. If the division has reasonable cause to believe that any workplace contains friable asbestos, and if there appears to be inadequate protection for employees at that workplace to the hazards from airborne asbestos fibers, the division may issue an order prohibiting use.

(Added by Stats. 1985, Ch. 1587, Sec. 7.4. Effective October 2, 1985.)

6326. Every person who, after such notice is attached as provided in Section 6325, enters any such place of employment, or uses or operates any such place of employment, machine, device, apparatus, or equipment before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces, destroys or removes any such notice without the authority of the division, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars ($1,000), or up to one year in the county jail, or both.

(Added by Stats. 1973, Ch. 993.)

6327. Once an authorized representative of the division has prohibited entry in or use of a place of employment, machine, device, apparatus, or equipment, as specified in Section 6325, the employer may contest the order and shall be granted, upon request, a hearing by the division to review the validity of the representative's order. The hearing shall be held within 24 hours following the employer's request.

(Repealed and added by Stats. 1986, Ch. 1178, Sec. 2.)

6327.5. If the division arbitrarily or capriciously fails to take action to prevent or prohibit any conditions or practices in any employment or place of employment which are such that danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through other available means, any employee who may be injured by reason of such failure, or the representatives of such employees, may bring an action against the chief of the division in any appropriate court for a writ of mandate to compel the division to prevent or prohibit the condition. Nothing contained in this section shall be deemed to prevent the bringing of a writ of mandate against any appropriate person or entity as may be provided by law.

(Added by Stats. 1973, Ch. 993.)

6328. The division shall prepare a notice containing pertinent information regarding safety rules and regulations. The notice shall contain the address and telephone number of the nearest division office; a clear explanation of an employee's right to report any unsafe working conditions; the right to request a safety inspection by the division for unsafe conditions; the right to refuse to work under conditions which endanger his life or health; the right to receive information under the Hazardous Substances Information and Training Act (Ch. 2.5 (commencing with Section 6360)); posting and notice requirements of employers and the division; and any other information the division deems necessary. It shall be supplied to employers as soon as practical. The division shall promulgate regulations on the content and the required location and number of notices which must be posted by employers. Sufficient posters in both English and Spanish shall be printed to supply employers in this state.

(Amended by Stats. 1984, Ch. 507, Sec. 1.)

6329. All money collected for violation of standards, orders, or special orders of, or for fees paid pursuant to this division shall be paid into the state treasury to the credit of the General Fund.

The Department of Industrial Relations shall account to the Department of Finance and the State Controller for all moneys so received and furnish proper vouchers therefor.

(Added by Stats. 1973, Ch. 993.)

6330. The director shall prepare and submit to the Legislature, not later than March 1, an annual report on the division activities. The report shall include, but need not be limited to, the following information for the previous calendar year:

(a) The amount of funds allocated and spent in enforcement, education and research, and administration by the division.

(b) Total inspections made, and citations issued by the division.

(c) The number of civil penalties assessed, total amount of fines collected and the number of appeals heard.

(d) The number of contractors referred to the Contractor's State License Board for hearing, pursuant to Section 7109.5 of the Business and Professions Code, and the total number of these cases resulting in suspension or revocation of a license.

(e) The report from the division prepared by the Bureau of Investigations for submission to the director pursuant to Section 6315.3.

(f) Recommendations for legislation which improves the ability of the division to provide safety in places of employment.

The report shall be made to the Speaker of the Assembly and the Chairman of the Rules Committee of the Senate, for assignment to the appropriate committee or committees for evaluation.

(Amended by Stats. 1984, Ch. 1317, Sec. 8.)

6331. The division shall enter into a contract for the development and execution of tests to define safety standards for the use of positive pressure, closed circuit, breathing apparatus in interior structural fires. The testing shall define numerically what constitutes positive pressure in breathing apparatus. The testing shall also address the issues of the heat of the oxygen coming into the mask, the condensation inside the mask, the possibility of, and effect of, moisture condensation in the lungs of the wearer of the mask, and the risks associated with a dislodgement of the mask in an interior structural fire situation. The development of these tests shall utilize the resources of recognized specialists in fire research to design, conduct, and execute the tests and develop the standards. The standards board shall adopt or revise safety standards based on the results of these tests.

The test parameters, the location where the testing will take place, and the level of expertise required shall be determined by the Cal-OSHA Self Contained Breathing Apparatus Advisory Committee.

(Added by Stats. 1984, Ch. 1571, Sec. 1.)

6332. (a) For purposes of this section, the following terms have the following meanings:

(1) "Community health care worker" means an individual who provides health care or health care-related services to clients in home settings.

(2) "Employer" means a person or entity that employs a community health care worker. "Employer" does not include an individual who is a recipient of home-based services and who is responsible for hiring his or her own community health care worker.

(3) "Violence" means a physical assault or a threat of a physical assault.

(b) Every employer shall keep a record of any violence committed against a community health care worker and shall file a copy of that record with the department in the form and detail and within the time limits prescribed by the department.

(Amended by Stats. 2012, Ch. 46, Sec. 107. Effective June 27, 2012.)

Chapter 2. Education and Research

(Chapter 2 repealed and added by Stats. 1973, Ch. 993.)

6350. The division shall maintain an education and research program for the purpose of providing in-service training of division personnel, safety education for employees and employers, research and consulting safety services.

(Added by Stats. 1973, Ch. 993.)

6351. The division shall be responsible for preparation and distribution of information concerning occupational safety and health programs, methods, techniques or devices. Such information may include but is not limited to safety publications, films and audiovisual material, speeches and conferences on safety.

(Added by Stats. 1973, Ch. 993.)

6352. The division shall provide safety training programs, upon request, for employees and employers. Priority for the development of safety training programs shall be in those occupations which pose the greatest hazard to the safety and health of employees.

(Added by Stats. 1973, Ch. 993.)

6353. The division shall conduct continuing research into methods, means, operations, techniques, processes and practices necessary for improvement of occupational safety and health of employees.

(Added by Stats. 1973, Ch. 993.)

6354. The division shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services shall include:

(a) A program for identifying categories of occupational safety and health hazards causing the greatest number and most serious preventable injuries and illnesses and workers' compensation losses and the places of employment where they are occurring. The hazards, industries, and places of employment shall be identified from the data system that is used in the targeted inspection program pursuant to Section 6314.1. The division shall develop procedures for offering consultation services to high hazard employers who are identified pursuant to this section. The services may include the development of educational material and procedures for reducing or eliminating safety and health hazards, conducting workplace surveys to identify health and safety problems, and development of plans to improve employer health and safety loss records.

The program shall include a component for reducing the number of work-related, repetitive motion injuries, including, but not limited to, back injuries. The division may formulate recommendations for reducing repetitive motion injuries after conducting a survey of the workplace of the employer who accepts services of the division. The recommendations shall include, wherever appropriate, the application of generally accepted ergonomic and engineering principles to eliminate repetitive motions that are generally expected to result in injuries to workers. The recommendations shall also include, wherever appropriate, training programs to instruct workers in methods for performing job-related movements, such as lifting heavy objects, in a manner that minimizes strain and provides safeguards against injury.

The division shall establish model injury and illness prevention training programs to prevent repetitive motion injuries, including recommendations for the minimum qualifications of instructors. The model programs shall be made available to employers, employer associations, workers' compensation insurers, and employee organizations on request.

(b) A program for providing assistance in the development of injury prevention programs for employees and employers. The highest priority for the division's consulting services shall be given to development of these programs for businesses with fewer than 250 employees in industries identified in the regional plans developed pursuant to subdivision (b) of Section 6314.1.

(c) A program for providing employers or employees with information, advice, and recommendations on maintaining safe employment or place of employment, and on applicable

occupational safety and health standards, techniques, devices, methods, practices, or programs.

(Amended by Stats. 1995, Ch. 903, Sec. 9. Effective January 1, 1996.)

6354.5. (a) Any insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services. The insurer may employ qualified personnel to provide these services or provide the services through another entity.

(b) The program of an insurer for furnishing loss control consultation services shall be adequate to meet minimum standards prescribed by this section. Required loss control consultation services shall be adequate to identify the hazards exposing the insured to, or causing the insured, significant workers' compensation losses, and to advise the insured of steps needed to mitigate the identified workers' compensation losses or exposures. The program of an insurer for furnishing loss control consultation services shall provide all of the following:

(1) A workplace survey, including discussions with management and, where appropriate, nonmanagement personnel with permission of the employer.

(2) A review of injury records with appropriate personnel.

(3) The development of a plan to improve the employer's health and safety loss control experience, which shall include, where appropriate, modifications to the employer's injury and illness prevention program established pursuant to Section 6401.7. At the time that an insurance policy is issued and annually thereafter, and again when notified by Cal-OSHA that an insured employer has been identified as a targeted employer pursuant to Section 6314.1, the insurer shall provide each insured employer with a written description of the consultation services together with a notice that the services are available at no additional charge to the employer. These notices to the employer shall appear in at least 10-point bold type.

(c) The insurer shall not charge any fee in addition to the insurance premium for safety and health loss control consultation services.

(d) Nothing in this section shall be construed to require insurers to provide loss control services to places of employment that do not pose significant preventable hazards to workers.

(e) The director shall establish an insurance loss control services coordinator position in the Department of Industrial Relations. The coordinator shall provide information to employers about the availability of loss control consultation services and respond to employers' questions and complaints about loss control consultation services provided by their insurer. The coordinator shall notify the insurer of every complaint concerning loss control consultation services. If the employer and the insurer are unable to agree on a mutually satisfactory solution to the complaint, the coordinator shall investigate the complaint. Whenever the coordinator determines that the loss control consultation services provided by the insurer are inadequate or inappropriate, he or she shall recommend to the employer and the insurer the actions required to bring the loss control program into compliance. If the employer and the insurer are unable to agree on a mutually satisfactory solution to the complaint, the coordinator shall forward his or her recommendations to the director. The cost of providing the coordinator services shall be paid out of the Workers' Occupational Safety and Health Education Fund created by subdivision (a) of Section 6354.7. However, no more than 20 percent of that fund may be expended for this purpose each year.

(Amended by Stats. 2002, Ch. 6, Sec. 83. Effective January 1, 2003.)

6354.7. (a) The Workers' Occupational Safety and Health Education Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended, upon appropriation by the Legislature, by the Commission on Health and Safety and Workers' Compensation for the purpose of establishing and maintaining a worker occupational safety and health training and education program and an insurance loss control services coordinator. The director shall levy and collect fees to fund these purposes from insurers subject to Section 6354.5. However, the fee assessed against any insurer shall not exceed the greater of one hundred dollars ($100) or 0.0286 percent of paid workers' compensation indemnity amounts for claims as reported for the previous calendar year to the designated rating organization for the analysis required under subdivisions (b) and (c) of Section 11759.1 of the Insurance Code. All fees shall be deposited in the fund.

(b) The commission shall establish and maintain a worker safety and health training and education program. The purpose of the worker occupational safety and health training and education program shall be to promote awareness of the need for prevention education programs, to develop and provide injury and illness prevention education programs for employees and their representatives, and to deliver those awareness and training programs through a network of providers throughout the state. The commission may conduct the program directly or by means of contracts or interagency agreements.

(c) The commission shall establish an employer and worker advisory board for the program. The advisory board shall guide the development of curricula, teaching methods, and specific course material about occupational safety and health, and shall assist in providing links to the target audience and broadening the partnerships with worker-based organizations, labor studies programs, and others that are able to reach the target audience.

(d) The program shall include the development and provision of a needed core curriculum addressing competencies for effective participation in workplace injury and illness prevention programs and on joint labor-management health and safety committees. The core curriculum shall include an overview of the requirements related to injury and illness prevention programs and hazard communication.

(e) The program shall include the development and provision of additional training programs for any or all of the following categories:

(1) Industries on the high hazard list.

(2) Hazards that result in significant worker injuries, illnesses, or compensation costs.

(3) Industries or trades in which workers are experiencing numerous or significant injuries or illnesses.

(4) Occupational groups with special needs, such as those who do not speak English as their first language, workers with limited literacy, young workers, and other traditionally underserved industries or groups of workers. Priority shall be given to training workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those workers serving on a health and safety committee or serving as designated safety representatives.

(f) The program shall operate one or more libraries and distribution systems of occupational safety and health training material, which shall include, but not be limited to, all material developed by the program pursuant to this section.

(g) The advisory board shall annually prepare a written report evaluating the use and impact of programs developed.

(h) The payment of administrative costs incurred by the commission in conducting the program shall be made from the Workers' Occupational Safety and Health Education Fund.

(Added by Stats. 2002, Ch. 866, Sec. 15. Effective January 1, 2003.)

6355. If the employer requests or accepts consulting services offered pursuant to Section 6354, the division in providing such services at the employer's employment or place of employment shall neither institute any prosecution under Section 6423 nor issue any citations for a violation of any standard or order adopted pursuant to Chapter 6 (commencing with Section 140) of Division 1. In any instance in which the division representative providing the consulting service finds that the conditions of employment, place of employment, any work procedure, or the operation of any machine, device, apparatus, or equipment constitutes an imminent hazard or danger, within the meaning of Section 6325, to the lives, safety, or health of employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division pursuant to Section 6325. The employer shall not, however, be liable to prosecution under Section 6423, nor shall the division issue any citations or assess any civil penalties, except in any case where the employer fails to comply with the division's prohibition of entry or use, or in any case where the provisions of Section 6326 apply.

(Amended by Stats. 1993, Ch. 121, Sec. 70. Effective July 16, 1993.)

6356. (a) There is hereby created, in the General Fund, the Worker Safety Bilingual Investigative Support, Enforcement, and Training Account. The moneys in the account may be expended by the department, upon appropriation by the Legislature, for the purposes of this part.

(b) The department may receive and accept a contribution of funds from an individual or private organization, including the proceeds from a judgment in a state or federal court, if the contribution is made to carry out the purposes of this part. The department shall immediately deposit the contribution in the account established by subdivision (a).

(c) The department may not receive or accept a contribution of funds under this section made from the proceeds of a judgment in a criminal action filed pursuant to Section 6423 or 6425 of the Labor Code.

(Added by Stats. 2002, Ch. 885, Sec. 5. Effective January 1, 2003.)

6357. On or before January 1, 1995, the Occupational Safety and Health Standards Board shall adopt standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion.

(Added by Stats. 1993, Ch. 121, Sec. 71. Effective July 16, 1993.)

6359. (a) The Legislature finds and declares the following:

(1) Every year 70 adolescents die from work injuries in the United States and 200,000 are injured, 70,000 seriously enough to require hospital treatment. Most of these injuries are preventable.

(2) A recent report by the Institute of Medicine and the National Research Council has brought national attention to the need for better education and interventions to aid injury and illness prevention efforts aimed at young workers.

(3) Since 1996, the California Study Group on Young Workers' Health and Safety, consisting of 30 representatives from key agencies and organizations involved with California youth employment and education issues, including representatives from government agencies, business, labor, parent and teacher organizations, and others, has met to develop recommendations to better protect and educate California's young workers.

(4) The study group recommended the establishment of a Resource Network on Young Workers' Health and Safety, to assist in increasing the ability of young workers and their communities to identify and address workplace hazards in order to prevent young workers from becoming injured or ill on the job.

(b) It is the intent of the Legislature that the Department of Industrial Relations, the University of California, the State Department of Education, the State Department of Health Services, and the Employment Development Department cooperatively and individually conduct activities aimed at the prevention of occupational injuries and illnesses among young workers.

(c) The Department of Industrial Relations shall contract with a coordinator to establish a statewide young worker health and safety resource network. The primary function of the resource network shall be to assist in increasing the ability of young workers and their communities statewide to identify and address workplace hazards in order to prevent young workers from becoming injured or ill on the job. The network shall coordinate and augment existing outreach and education efforts and provide technical assistance, education materials and other support to schools, job training programs, employers and other organizations working to educate students and their communities about workplace health and safety and child labor laws.

(d) The resource network shall provide, and the lead center shall coordinate, services to all key groups throughout the state involved in education and protecting young workers, including, but not limited to:

(1) Teachers.
(2) Schools.
(3) Job training programs.
(4) Employers of youth.
(5) Parent groups.
(6) Youth organizations.
(7) Work permit issuers.

(e) The resource network shall be advised by a statewide advisory group, including, but not limited to, representatives from the Department of Industrial Relations, the Commission on Health and Safety and Worker's Compensation, the University of California, the State Department of Education, the Department of Health Services, and the Employment Development Department, as well as business, labor, parents, and others experienced in working with youth doing agricultural and nonagricultural work. The advisory group shall represent diverse geographic regions of the state.

(f) This section shall be implemented subject to the availability of funding for the purposes of this section in the 2000–01 Budget Act.

(Added by Stats. 2000, Ch. 598, Sec. 1. Effective January 1, 2001.)

Chapter 2.5. Hazardous Substances Information and Training

(Chapter 2.5 added by Stats. 1980, Ch. 874.)

Article 1. General Provisions

(Article 1 added by Stats. 1980, Ch. 874.)

6360. This chapter shall be known and may be cited as the Hazardous Substances Information and Training Act.

(Added by Stats. 1980, Ch. 874.)

6361. (a) The Legislature finds and declares the following:

(1) Hazardous substances in the workplace in some forms and concentrations pose potential acute and chronic health hazards to employees who are exposed to these substances.

(2) Employers and employees have a right and a need to know the properties and potential hazards of substances to which they may be exposed, and such knowledge is essential to reducing the incidence and cost of occupational disease.

(3) Employers do not always have available adequate data on the contents and properties of specific hazardous substances necessary for the provision of a safe and healthful workplace and the provision of information and training to employees as is the responsibility of the employer under existing law.

(4) Many effective employee information and training programs now exist, and with the increased availability of basic information and with the extension of such programs to all affected employees, preventable health risks in the workplace would be further reduced.

(b) The Legislature, therefore, intends by this chapter to ensure the transmission of necessary information to employees regarding the properties and potential hazards of hazardous substances in the workplace.

(Added by Stats. 1980, Ch. 874.)

6362. The rights and duties set forth in this chapter apply to all employers who use hazardous substances in this state, to any person who sells a hazardous substance to any employer in this state, and to manufacturers who produce or sell hazardous substances in this state. The provisions of this chapter apply to hazardous substances which are present in the workplace as a result of workplace operations in such a manner that employees may be exposed under normal conditions of work or in a reasonably foreseeable emergency resulting from workplace operations. For purposes of this chapter, an emergency includes, but is not limited to, equipment failure, rupture of containers, or failure of control equipment, which may or do result in a release of a hazardous substance into the workplace.

(Added by Stats. 1980, Ch. 874.)

6363. Nothing in this chapter shall be construed to require a manufacturer or employer to conduct studies to develop new information.

(Added by Stats. 1980, Ch. 874.)

Article 2. Definitions

(Article 2 added by Stats. 1980, Ch. 874.)

6365. Unless the context otherwise requires, the definitions in this article and the provisions of Article 1 shall govern the construction of provisions of this chapter.

(Added by Stats. 1980, Ch. 874.)

6366. "CAS number" means the unique identification number assigned by the Chemical Abstracts Service to specific chemical substances.

(Added by Stats. 1980, Ch. 874.)

6367. "Chemical name" is the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(Added by Stats. 1980, Ch. 874.)

6368. "Common name" means any designation or identification such as code name, code number, trade name, or brand name used to identify a substance other than by its chemical name.

(Added by Stats. 1980, Ch. 874.)

6370. "Expose" or "exposure" means any situation arising from work operation where an employee may ingest, inhale, absorb through the skin or eyes, or otherwise come into contact with a hazardous substance; provided, that such contact shall not be deemed to constitute exposure if the hazardous substance present is in a physical state, volume, or concentration for which it has been determined pursuant to Sections 6382 and 6390 that there is no valid and substantial evidence that any adverse acute or chronic risk to human health may occur from such contact.

(Added by Stats. 1980, Ch. 874.)

6371. "Impurity" means a hazardous substance which is unintentionally present with another substance or mixture.

(Added by Stats. 1980, Ch. 874.)

6372. "Manufacturer" means a person who produces, synthesizes, extracts, or otherwise makes a hazardous substance.

(Added by Stats. 1980, Ch. 874.)

6373. "Mixture" means any solution or intimate admixture of two or more substances, at least one of which is present as a hazardous substance, as designated pursuant to Sections 6382 and 6383, which do not react chemically with each other.

(Added by Stats. 1980, Ch. 874.)

6374. "MSDS" means a material safety data sheet prepared pursuant to Section 6390. A label in 8-point or larger type, prepared pursuant to Section 6390, shall constitute an MSDS for the purposes of this chapter.

(Added by Stats. 1980, Ch. 874.)

Article 3. Hazardous Substances

(Article 3 added by Stats. 1980, Ch. 874.)

6380. For the purposes of this chapter, the director, pursuant to Section 6382, shall establish a list of hazardous substances and shall make the list available to manufacturers, employers, and the public. Substances on the list shall be designated by their chemical and common name or names. The director shall adopt, amend, and repeal regulations for the establishment of the list of hazardous substances pursuant to the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1980, Ch. 874.)

6380.5. (a) Prior to the director's adoption of the list of hazardous substances, the director shall submit the list to the Occupational Safety and Health Standards Board for its approval. Within 90 days of receiving the list from the director, the board, after holding a hearing and considering the recommendations of the employers and employees who may be affected, shall do the following:

(1) Determine whether the substances listed are properly listed as hazardous substances pursuant to the criteria of Section 6382.

(2) Modify the list as necessary to achieve compliance with Section 6382.

(3) Approve the list of hazardous substances.

Upon receipt of the list approved by the board, the director shall adopt the list as a regulation pursuant to the procedures set forth in Section 6380. The inclusion or exclusion of any individual substance on the list of hazardous substances shall not be subject to Section 11346.2 or 11346.9 of the Government Code.

(b) Prior to the director's adoption of any additions to the list of hazardous substances pursuant to subdivision (c) of Section 6382, the director shall submit the additions to the board for its approval. Within 60 days of receiving the additions from the director, the board, after holding a hearing and considering the

recommendations of the employers and employees who may be affected, shall do the following:

(1) Determine whether the substances listed are properly listed as hazardous substances pursuant to the criteria of Section 6382.

(2) Modify the additions as necessary to achieve compliance with Section 6382.

(3) Approve the list of hazardous substances.

Upon receipt of the additions approved by the board, the director shall adopt the additions as a regulation pursuant to the procedures set forth in Section 6380. The inclusion or exclusion of any individual substance on the list of hazardous substances shall not be subject to Section 11346.2 or 11346.9 of the Government Code.

(Amended by Stats. 1995, Ch. 938, Sec. 78. Effective January 1, 1996.)

6381. Substances not present on the list of hazardous substances adopted pursuant to Section 6380 shall not be subject to the provisions of this chapter. However, the absence of designation as a hazardous substance in the list adopted pursuant to Section 6380 shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or other persons exposed to a toxic or hazardous substance; nor shall it affect any other duty or responsibility of a manufacturer, producer, or other maker to warn ultimate users of a substance pursuant to other provisions of law.

(Added by Stats. 1980, Ch. 874.)

6382. The director shall prepare and amend the list of hazardous substances according to the following procedure:

(a) Any substance designated in any of the following listings in subdivision (b) shall be presumed by the director to be potentially hazardous and shall be included on the list; provided, that the director shall not list a substance or form of the substance from the listings in subdivision (b) if he or she finds, upon a showing pursuant to the procedures set forth in Section 6380, that the substance as present occupationally is not potentially hazardous to human health; and provided further, that a substance, mixture, or product shall not be considered hazardous to the extent that the hazardous substance present is in a physical state, volume, or concentration for which there is no valid and substantial evidence that any adverse acute or chronic risk to human health may occur from exposure.

(b) The listings referred to in subdivision (a) are as follows:

(1) Substances listed as human or animal carcinogens by the International Agency for Research on Cancer (IARC).

(2) Those substances designated by the Environmental Protection Agency pursuant to Section 307 (33 U.S.C. Sec. 1317) and Section 311 (33 U.S.C. Sec. 1321) of the federal Clean Water Act of 1977 (33 U.S.C. Sec. 1251 et seq.) or as hazardous air pollutants pursuant to Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Sec. 7412) which have known, adverse human health risks.

(3) Substances listed by the Occupational Safety and Health Standards Board as an airborne chemical contaminant pursuant to Section 142.3.

(4) Those substances designated by the Director of Food and Agriculture as restricted materials pursuant to Section 14004.5 of the Food and Agricultural Code which have known, adverse human health risks.

(5) Substances for which an information alert has been issued by the repository of current data established pursuant to Section 147.2.

(c) The director shall at least every two years review the listings in subdivision (b) and shall revise the list to include new substances so listed or exclude substances no longer on the listings, pursuant to the standards set forth in subdivision (a).

(d) Notwithstanding Section 6381, in addition to those substances on the director's list of hazardous substances, any substance within the scope of the federal Hazard Communication Standard (29 C.F.R. Sec. 1910.1200) is a hazardous substance subject to this chapter.

(Amended by Stats. 1986, Ch. 248, Sec. 160. Note: See this section as modified on July 17, 1991, in Governor's Reorganization Plan No. 1 of 1991.)

6383. (a) For the purposes of this chapter, a hazardous substance is present in any mixture or product if it is present in any of the following concentrations:

(1) One percent or more of the mixture or product.

(2) Two percent of the mixture or product if the hazardous substance exists as an impurity in the mixture.

(3) One-tenth of 1 percent of the mixture or product if the hazardous substance in the mixture or product is designated as a carcinogen pursuant to the Occupational Carcinogens Control Act of 1976 (Ch. 2 (commencing with Section 24200), Div. 20, H.& S.C.) or the federal Hazard Communication Standard (29 C.F.R. Sec. 1910.1200).

The director may, by regulation, raise the concentration requirement for a hazardous substance which the director finds is not hazardous at the threshold levels; and, lower the concentration requirement for a hazardous substance for which there is valid and substantial evidence that the substance is extraordinarily hazardous.

(b) The manufacturer of a hazardous substance shall notify the director of any valid evidence which indicates that the concentration requirement for a hazardous substance established pursuant to subdivision (a) is higher than what is necessary to protect employees who work with, or may be exposed to, the substance.

(Amended by Stats. 1985, Ch. 1000, Sec. 2.)

6384. This chapter does not apply to impurities which develop as intermediate materials during chemical processing but are not present in the final product, and to which employee exposure is unlikely.

(Added by Stats. 1980, Ch. 874.)

6385. The provisions of this chapter do not apply to hazardous substances contained in either of the following:

(a) Products intended for personal consumption by employees in the workplace, or consumer products packaged for distribution to, and use by, the general public.

(b) Retail food sale establishments and all other retail trade establishments, exclusive of processing and repair work areas.

(Added by Stats. 1980, Ch. 874.)

6386. (a) A laboratory in which a hazardous substance is used by or under the direct supervision of a technically qualified individual is not an employer or manufacturer for the purposes of this chapter.

(b) This exemption does not excuse a laboratory from any of the following duties:

(1) A laboratory employer shall ensure that labels of incoming containers of hazardous substances are not removed or defaced.

(2) A laboratory employer shall maintain any material safety data sheets that are received with incoming shipments of hazardous substances and ensure that they are readily available to laboratory employees.

(c) This exemption does not include a laboratory that primarily provides a quality control analysis for a manufacturing process or produces hazardous substances for commercial purposes.

(d) "Technically qualified individual" means a person who, because of education, training, or experience, understands the risks associated with the use of the particular hazardous substance or mixture involved, and who conveys this knowledge to employees in terms of safe work practices.

(Amended by Stats. 1985, Ch. 1000, Sec. 3.)

Article 4. Duties

(Article 4 added by Stats. 1980, Ch. 874.)

6390. The manufacturer of any hazardous substance listed pursuant to the provisions of Section 6380 shall prepare and provide its direct purchasers of the hazardous substance with an MSDS containing the information specified in Section 6391 which, to the best of the manufacturer's knowledge, is current, accurate, and complete, based on information then reasonably available to the manufacturer. For purposes of this section, a substance, mixture, or product shall not be considered a hazardous substance if present in a physical state, volume, or concentration for which there is no valid and substantial evidence that any adverse acute or chronic risk to human health may occur from exposure. The manufacturer shall revise an MSDS on a timely basis as appropriate to the importance of any new information which would affect the contents of the existing MSDS, and in any event within one year of such information becoming available to the manufacturer. If the new information indicates significantly increased risks to, or measures necessary to protect, employee health, as compared to those stated on the MSDS previously provided, the manufacturer shall provide such new information to persons who have purchased the product directly from the manufacturer within the last year.

(Added by Stats. 1980, Ch. 874. Became operative on date prescribed in Section 6399.2.)

6390.5. The manufacturer, importer, and distributor of any hazardous substance, and the employer, shall label each container of a hazardous substance in a manner consistent with the federal Hazard Communication Standard (29 C.F.R. Sec. 1910.1200) and as set forth in applicable occupational safety and health standards adopted by the standards board.

(Added by Stats. 1985, Ch. 1000, Sec. 4.)

6391. The information which manufacturers shall provide to their purchasers pursuant to the provisions of Section 6390 shall include the following, if pertinent:

(a) The chemical name, any common names, and the CAS number of the hazardous substance.

(b) The hazards or other risks in the use of the hazardous substance, including all of the following:

(1) The potential for fire, explosion, and reactivity.

(2) The acute and chronic health effects or risks from exposure.

(3) The potential routes of exposure and symptoms of overexposure.

(c) The hazards or other risks of exposure to the combustion products of the hazardous substance.

(d) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the hazardous substance, and its combustion products.

(e) The emergency procedures for spills, fire, disposal, and first aid.

(f) A description in lay terms, if not otherwise provided, on either a separate sheet or with the body of the information specified in this section, of the specific potential health risks posed by the hazardous substance and its combustion products intended to alert any person reading the information.

(g) The month and year that the information was compiled and, for an MSDS issued after January 1, 1981, the name and address of the manufacturer responsible for preparing the information.

(Amended by Stats. 1988, Ch. 423, Sec. 1.)

6392. Provision of a federal Material Safety Data Sheet or equivalent shall constitute prima facie proof of compliance with Section 6390.

(Amended by Stats. 1992, Ch. 1214, Sec. 2. Effective January 1, 1993.)

6393. The manufacturer shall be relieved of the obligation to provide a specific purchaser of a hazardous substance with an MSDS pursuant to Section 6390 if the manufacturer has a record of having provided the specific purchaser with the most current version of the MSDS, or if the product is one sold at retail and is incidentally sold to an employer or the employer's employees, in the same form, approximate amount, concentration, and manner as it is sold to consumers, and, to the seller's knowledge, employee exposure to the product is not significantly greater than the consumer exposure occurring during the principal consumer use of the product. Except for products so labeled, this section does not relieve the manufacturer of the requirement to provide direct purchasers with new, revised, or later information or an MSDS pursuant to Section 6390.

(Amended by Stats. 1992, Ch. 427, Sec. 123. Effective January 1, 1993.)

6394. The preparer of an MSDS shall provide the department with a copy of the MSDS on each hazardous substance it manufactures. The preparer may transmit the MSDS to the department in either paper or electronic form. In the electronic filing of an MSDS, it is the responsibility of the preparer to protect any trade secret information contained in the MSDS during transmission to the department. Upon receipt by the department of the MSDS, it is the responsibility of the department to protect any trade secret information.

(Amended by Stats. 1999, Ch. 366, Sec. 1. Effective January 1, 2000.)

6395. (a) The manufacturer may provide the information required by Section 6390 on an entire product mixture, instead of on each hazardous substance in it, when all of the following conditions exist:

(1) Hazard test information exists on the mixture itself, or adequate information exists to form a valid judgment of the hazardous properties of the mixture itself and the MSDS indicates that the information presented and the conclusions drawn are from some source other than direct test data on the mixture itself, and that an MSDS on each constituent hazardous substance identified on the MSDS is available upon request.

(2) Provision of information on the mixture will be as effective in protecting employee health as information on the ingredients.

(3) The hazardous substances in the mixture are identified on the MSDS unless it is either unfeasible to describe all the ingredients in the mixture or the identity of the ingredients is itself a valid trade secret, in either case the reason why the hazardous substances in the mixture are not identified shall be stated on the MSDS.

(b) A single mixture MSDS may be provided for more than one formulation of a product mixture if the information provided pursuant to Section 6390 does not vary for the formulation.

(Added by Stats. 1980, Ch. 874. Became operative on date prescribed in Section 6399.2.)

6396. (a) The Director of Industrial Relations shall protect from disclosure any and all trade secrets coming into his or her possession, as defined in subdivision (d) of Section 6254.7 of the Government Code, when requested in writing or by appropriate stamping or marking of documents by the manufacturer or producer of a mixture.

(b) Any information reported to or otherwise obtained by the Director of Industrial Relations, or any of his or her representatives or employees, which is exempt from disclosure under subdivision (a), shall not be disclosed to anyone except an officer or employee of the state or of the United States of America, in connection with the official duties of that officer or employee under any law for the protection of health, or to contractors with the state and their employees if in the opinion of the director the disclosure is necessary and required for the satisfactory performance of a contract for performance of work in connection with this act.

(c) Any officer or employee of the state, or former officer or employee, who by virtue of that employment or official position has obtained possession of or has access to material the disclosure of which is prohibited by this section, and who, knowing that disclosure of the material is prohibited, knowingly and willfully discloses the material in any manner to any person not entitled to receive it, is guilty of a misdemeanor. Any contractor with the state and any employee of that contractor, who has been furnished information as authorized by this section, shall be considered to be an employee of the state for purposes of this section.

(d) Information certified to by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protections against disclosure as specified by that official or in accordance with the laws of the United States.

(e) (1) The director, upon his or her own initiative, or upon receipt of a request pursuant to the California Public Records Act, (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) for the release of data submitted and designated as a trade secret by an employer, manufacturer, or producer of a mixture, shall determine whether any or all of the data so submitted are a properly designated trade secret.

(2) If the director determines that the data is not a trade secret, the director shall notify the employer, manufacturer, or producer of a mixture by certified mail.

(3) The employer, manufacturer, or producer of a mixture shall have 15 days after receipt of notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(4) The director shall determine whether the data are protected as a trade secret within 15 days after receipt of the justification and statement, or if no justification and statement is filed, within 30 days of the original notice, and shall notify the employer or manufacturer and any party who has requested the data pursuant to the California Public Records Act of that determination by certified mail. If the director determines that the data are not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to the public.

(5) Prior to the date specified in the final notice, an employer, manufacturer, or producer of a mixture may institute an action in an appropriate superior court for a declaratory judgment as to whether the data are subjected to protection under subdivision (a).

(f) This section does not authorize a manufacturer to refuse to disclose information required pursuant to this chapter to the director.

(Amended by Stats. 1995, Ch. 91, Sec. 109. Effective January 1, 1996.)

6397. (a) Any person other than a manufacturer who sells a mixture or any hazardous substance shall provide its direct purchasers of the mixture or hazardous substance at the time of sale with a copy of the most recent MSDS or equivalent information prepared and supplied to the person pursuant to either Section 6390 or subdivision (b) whenever it is foreseeable that the provisions of this chapter may apply to the purchaser.

(b) Any person who produces a mixture may, for the purposes of this section, prepare and use a mixture MSDS, subject to the provisions of Section 6395.

(c) Any person subject to the provisions of subdivision (a) shall be relieved of the obligation to provide a specific purchaser of a hazardous substance with an MSDS if he or she has a record of having provided the specific purchaser with the most recent version of the MSDS, or if the product is one sold at retail and is incidentally sold to an employer or the employer's employees, in the same form, approximate amount, concentration, and manner as it is sold to consumers, and, to the seller's knowledge, employee exposure to the product is not significantly greater than the consumer exposure occurring during the principal consumer use of the product.

(Amended by Stats. 1991, Ch. 274, Sec. 4.)

6398. The Occupational Safety and Health Standards Board shall adopt a standard setting forth an employer's duties toward its employees under this chapter, on or before July 1, 1981, consistent with the following guidelines:

(a) An MSDS shall be available to an employee, collective bargaining representative, or the employee's physician, on a timely and reasonable basis, on substances in the workplace.

(b) Employers shall furnish employees who may be exposed to a hazardous substance with information on the contents of the MSDS for the hazardous substances or equivalent information, either in written form or through training programs, which may be generic to the extent appropriate and related to the job.

(c) Provision shall be made for employees to be informed of their rights under this chapter and under the standard to be adopted.

(Added by Stats. 1980, Ch. 874. Became operative on date prescribed in Section 6399.2.)

6399. Upon request, the manufacturer of a hazardous substance or the producer of a mixture who has produced a mixture MSDS pursuant to the provisions of subdivision (b) of Section 6397 shall make available to any employer, whose employees may be exposed to its product in the workplace, an MSDS on its product. If the employer does not already have an MSDS and has not already made written inquiry within 12 months as to whether a substance or product is subject to the requirements of this chapter or if the employer has not already made written inquiry within 6 months as to whether any new, revised, or later information has been issued for a hazardous substance, the employer shall do so within seven working days of a request to do so by an employee or employee's collective bargaining representative or physician. The employer may adopt reasonable procedures for acting upon such employee requests to

avoid interruption of normal work operations. The manufacturer or the producer of a mixture MSDS pursuant to the provisions of Section 6397 shall answer such inquiries within 15 working days of their receipt, stating that the substance or product is subject to the requirements of this chapter and furnishing the most current MSDS or a statement that the MSDS is under development and the estimated completion date, or stating that it is not subject to the requirements of this chapter, with a brief explanation of why the chapter is not applicable. If an employer has not received a response from a manufacturer within 25 working days of the date the request was made, the employer shall send a copy of the request made of the manufacturer to the director with the notation that no response has been received.

(Added by Stats. 1980, Ch. 874. Became operative on date prescribed in Section 6399.2.)

6399.1. Compliance with regulations of the Director of Food and Agriculture issued pursuant to Section 12981 of the Food and Agricultural Code shall be deemed compliance with the obligations of an employer toward his or her employees under this chapter.

(Added by Stats. 1980, Ch. 874. Became operative on date prescribed in Section 6399.2. Note: See this section as modified on July 17, 1991, in Governor's Reorganization Plan No. 1 of 1991.)

6399.2. This article shall become operative 180 days after adoption of the initial list of hazardous substances pursuant to Article 3 (commencing with Section 6380).

(Added by Stats. 1980, Ch. 874. Note: This section prescribes a delayed operative date for Article 4, commencing with Section 6390.)

Article 5. Liability and Remedies

(Article 5 added by Stats. 1980, Ch. 874.)

6399.5. The provisions of this chapter regarding manufacturers, employers, and persons subject to the provisions of Section 6397, shall be enforced pursuant to the provisions of this division pertaining to enforcement of standards adopted under Section 142.3.

(Added by Stats. 1980, Ch. 874.)

6399.6. The provision of information to an employee pursuant to the provisions of this chapter shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or other persons exposed to a toxic or hazardous substance; nor shall it affect any other duty or responsibility of a manufacturer, producer, or other maker to warn ultimate users of a substance pursuant to other provisions of law.

(Added by Stats. 1980, Ch. 874.)

6399.7. No person shall discharge or in any manner discriminate against, any employee because such employee has filed any complaint or has instituted, or caused to be instituted, any proceeding under or related to the provisions of this chapter, or has testified, or is about to testify, in any such proceeding, or because of the exercise of any right afforded pursuant to the provisions of this chapter on such employee's behalf or on behalf of others, nor shall any pay, seniority, or other benefits be lost for exercise of any such right. A violation of the provisions of this section shall be a violation of the provisions of Section 6310.

(Added by Stats. 1980, Ch. 874.)

Chapter 3. Responsibilities and Duties of Employers and Employees

(Chapter 3 repealed and added by Stats. 1973, Ch. 993.)

6400. (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

(b) On multiemployer worksites, both construction and nonconstruction, citations may be issued only to the following categories of employers when the division has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division:

(1) The employer whose employees were exposed to the hazard (the exposing employer).

(2) The employer who actually created the hazard (the creating employer).

(3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer).

(4) The employer who had the responsibility for actually correcting the hazard (the correcting employer).

The employers listed in paragraphs (2) to (4), inclusive, of this subdivision may be cited regardless of whether their own employees were exposed to the hazard.

(c) It is the intent of the Legislature, in adding subdivision (b) to this section, to codify existing regulations with respect to the responsibility of employers at multiemployer worksites. Subdivision (b) of this section is declaratory of existing law and shall not be construed or interpreted as creating a new law or as modifying or changing an existing law.

(Amended by Stats. 1999, Ch. 615, Sec. 4. Effective January 1, 2000.)

6401. Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

(Repealed and added by Stats. 1973, Ch. 993.)

6401.5. No salvage of materials shall be permitted while demolition is in progress on any building, structure, falsework, or scaffold more than three stories high or the equivalent height for which a permit is required under subdivision (c) of Section 6500.

For this purpose salvage does not include removal of material from premises solely for the purpose of clearing the area to facilitate the continuation of the demolition.

(Added by Stats. 1976, Ch. 33.)

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written, except as provided in subdivision (e), and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard. An employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use employee training provided to the employer's employees under a construction industry occupational safety and health training program approved by the division to comply with the requirements of subdivision (a) relating to employee training, and shall only be required to provide training on hazards specific to an employee's job duties.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program. An employer in the construction industry who is required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the division to comply with this subdivision, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) (A) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

(B) For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's periodic, scheduled worksite inspections; investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances; and investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) (A) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

(B) If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

(h) The employer's injury prevention program, as required by this section, shall cover all of the employer's employees and all other workers who the employer controls or directs and directly supervises on the job to the extent these workers are exposed to worksite and job assignment specific hazards. Nothing in this subdivision shall affect the obligations of a contractor or other employer that controls or directs and directly supervises its own employees on the job.

(i) When a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency's injury prevention program.

(j) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first citation for a violation of this section issued after the employer's adoption and implementation of the model program.

(2) For purposes of this subdivision, the division shall establish a list of non-high-hazard industries in California. These industries, identified by their Standard Industrial Classification Codes, as published by the United States Office of Management and Budget in the Manual of Standard Industrial Classification Codes, 1987 Edition, are apparel and accessory stores (Code 56), eating and drinking places (Code 58), miscellaneous retail (Code 59), finance, insurance, and real estate (Codes 60–67), personal services (Code 72), business services (Code 73), motion pictures (Code 78) except motion picture production and allied services (Code 781), legal services (Code 81), educational services (Code 82), social services (Code 83), museums, art galleries, and botanical and zoological gardens (Code 84), membership organizations (Code 86), engineering, accounting, research, management, and related services (Code 87), private households (Code 88), and miscellaneous services (Code 89). To further identify industries that may be included on the list, the division shall also consider data from a rating organization, as defined in Section 11750.1 of the Insurance Code, and all other appropriate information. The list shall be established by June 30, 1994, and shall be reviewed, and as necessary revised, biennially.

(3) The division shall prepare a Model Injury and Illness Prevention Program for Employers in Industries with Intermittent Employment, and shall determine which industries have historically utilized seasonal or intermittent employees. An employer in an industry determined by the division to have historically utilized seasonal or intermittent employees shall be deemed to have complied with the requirements of subdivision (a) with respect to a written injury prevention program if the employer adopts the model program prepared by the division pursuant to this paragraph and complies with any instructions relating thereto.

(k) With respect to any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement, subdivision (d) shall not apply.

(l) Every workers' compensation insurer shall conduct a review, including a written report as specified below, of the injury and illness prevention program (IIPP) of each of its insureds with an experience modification of 2.0 or greater within six months of the commencement of the initial insurance policy term. The review shall determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness. The training component of the IIPP shall be evaluated to determine whether training is provided to line employees, supervisors, and upper level management, and effectively imparts the information and skills each of these groups needs to ensure that all of the insured's specific health and safety issues are fully addressed by the insured. The reviewer shall prepare a detailed written report specifying the findings of the review and all recommended changes deemed necessary to make the IIPP effective. The reviewer shall be or work under the direction of a licensed California professional engineer, certified safety professional, or a certified industrial hygienist.

(Amended by Stats. 2012, Ch. 46, Sec. 108. Effective June 27, 2012.)

6401.8. (a) The standards board, no later than July 1, 2016, shall adopt standards developed by the division that require a hospital licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code, except as exempted by subdivision (d), to adopt a workplace violence prevention plan as a part of its injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior.

(b) The standards adopted pursuant to subdivision (a) shall include all of the following:

(1) A requirement that the workplace violence prevention plan be in effect at all times in all patient care units, including inpatient and outpatient settings and clinics on the hospital's license.

(2) A definition of workplace violence that includes, but is not limited to, both of the following:

(A) The use of physical force against a hospital employee by a patient or a person accompanying a patient that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury.

(B) An incident involving the use of a firearm or other dangerous weapon, regardless of whether the employee sustains an injury.

(3) A requirement that a workplace violence prevention plan include, but not be limited to, all of the following:

(A) Personnel education and training policies that require all health care workers who provide direct care to patients to, at least annually, receive education and training that is designed to provide an opportunity for interactive questions and answers with a person knowledgeable about the workplace violence prevention plan. The education and training shall cover topics that include, but are not limited to, the following topics:

(i) How to recognize potential for violence, and when and how to seek assistance to prevent or respond to violence.

(ii) How to report violent incidents to law enforcement.

(iii) Any resources available to employees for coping with incidents of violence, including, but not limited to, critical incident stress debriefing or employee assistance programs.

(B) A system for responding to, and investigating violent incidents and situations involving violence or the risk of violence.

(C) A system to, at least annually, assess and improve upon factors that may contribute to, or help prevent workplace violence, including, but not limited to, the following factors:

(i) Staffing, including staffing patterns and patient classification systems that contribute to, or are insufficient to address, the risk of violence.

(ii) Sufficiency of security systems, including alarms, emergency response, and security personnel availability.

(iii) Job design, equipment, and facilities.

(iv) Security risks associated with specific units, areas of the facility with uncontrolled access, late-night or early morning shifts, and employee security in areas surrounding the facility such as employee parking areas.

(4) A requirement that all workplace violence prevention plans be developed in conjunction with affected employees, including their recognized collective bargaining agents, if any.

(5) A requirement that all temporary personnel be oriented to the workplace violence prevention plan.

(6) Provisions prohibiting hospitals from disallowing an employee from, or taking punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs.

(7) A requirement that hospitals document, and retain for a period of five years, a written record of any violent incident against a hospital employee, regardless of whether the employee sustains an injury, and regardless of whether the report is made by the employee who is the subject of the violent incident or any other employee.

(8) A requirement that a hospital report violent incidents to the division. If the incident results in injury, involves the use of a firearm or other dangerous weapon, or presents an urgent or emergent threat to the welfare, health, or safety of hospital personnel, the hospital shall report the incident to the division within 24 hours. All other incidents of violence shall be reported to the division within 72 hours.

(c) By January 1, 2017, and annually thereafter, the division, in a manner that protects patient and employee confidentiality, shall post a report on its Internet Web site containing information regarding violent incidents at hospitals, that includes, but is not limited to, the total number of reports, and which specific hospitals filed reports, pursuant to paragraph (8) of subdivision (b), the outcome of any related inspection or investigation, the citations levied against a hospital based on a violent incident, and recommendations of the division on the prevention of violent incidents at hospitals.

(d) This section shall not apply to a hospital operated by the State Department of State Hospitals, the State Department of Developmental Services, or the Department of Corrections and Rehabilitation.

(e) This section does not limit the authority of the standards board to adopt standards to protect employees from workplace violence. Nothing in this section shall be interpreted to preclude the standards board from adopting standards that require other employers, including, but not limited to, employers exempted from this section by subdivision (d), to adopt plans to protect employees from workplace violence. Nothing in this section shall be interpreted to preclude the standards board from adopting standards that require an employer subject to this section, or any other employer, to adopt a workplace violence prevention plan that includes elements or requirements additional to, or broader in scope than, those described in this section.

(Added by Stats. 2014, Ch. 842, Sec. 1. Effective January 1, 2015.)

6402. No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

(Repealed and added by Stats. 1973, Ch. 993.)

6403. No employer shall fail or neglect to do any of the following:

(a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

(b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.

(c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

(Amended by Stats. 1983, Ch. 142, Sec. 113.)

6403.5. (a) As part of the injury and illness prevention programs required by Section 3203 of Title 8 of the California Code of Regulations, or any successor law or regulation, employers shall adopt a patient protection and health care worker back and musculoskeletal injury prevention plan. The plan shall include a safe patient handling policy component reflected in professional occupational safety guidelines for the protection of patients and health care workers in health care facilities.

(b) An employer shall maintain a safe patient handling policy at all times for all patient care units, and shall provide trained lift teams or other support staff trained in safe lifting techniques in each general acute care hospital. The employer shall provide training to health care workers that includes, but is not limited to, the following:

(1) The appropriate use of lifting devices and equipment.

(2) The five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation.

(3) The use of lifting devices to handle patients safely.

(c) As the coordinator of care, the registered nurse shall be responsible for the observation and direction of patient lifts and mobilization, and shall participate as needed in patient handling in accordance with the nurse's job description and professional judgment.

(d) For purposes of this section, "lift team" means hospital employees specifically trained to handle patient lifts, repositionings, and transfers using patient transfer, repositioning, or lifting devices as appropriate for the specific patient. Lift team members may perform other duties as assigned during their shifts. A general acute care hospital shall not be required by this section to hire new staff to comprise the lift team so long as direct patient care assignments are not compromised.

(e) For purposes of this section, "health care worker" means a lift team member or other staff responsible for assisting in lifting patients who is a hospital employee specifically trained to handle patient lifts, repositioning, and transfers using patient transfer, repositioning, and lifting devices as appropriate for the specific patient.

(f) For the purposes of this section, "safe patient handling policy" means a policy that requires replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices, and lift teams, as appropriate for the specific patient and consistent with the employer's safety policies and the professional judgment and clinical assessment of the registered nurse.

(g) A health care worker who refuses to lift, reposition, or transfer a patient due to concerns about patient or worker safety or the lack of trained lift team personnel or equipment shall not, based upon the refusal, be the subject of disciplinary action by the hospital or any of its managers or employees.

(h) This section shall not apply to general acute care hospitals within the Department of Corrections and Rehabilitation or the State Department of Developmental Services.

(Added by Stats. 2011, Ch. 554, Sec. 3. Effective January 1, 2012.)

6404. No employer shall occupy or maintain any place of employment that is not safe and healthful.

(Repealed and added by Stats. 1973, Ch. 993.)

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that an area not defined as a "place of employment" pursuant to subdivision (e) is subject to local regulation of smoking of tobacco products.

(b) For purposes of this section, an "owner-operated business" shall mean a business having no employees, independent

contractors, or volunteers, in which the owner-operator of the business is the only worker. "Enclosed space" includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (e).

(c) An employer or owner-operator of an owner-operated business shall not knowingly or intentionally permit, and a person shall not engage in, the smoking of tobacco products at a place of employment or in an enclosed space.

(d) For purposes of this section, an employer or owner-operator of an owner-operated business who permits any nonemployee access to his or her place of employment or owner-operated business on a regular basis has not acted knowingly or intentionally in violation of this section if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace or owner-operated business.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or owner-operated business or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee or owner-operator.

(e) For purposes of this section, "place of employment" does not include any of the following:

(1) Twenty percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment, the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(3) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if nonsmoking employees are not present.

(4) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(5) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(6) Private residences, except for private residences licensed as family day care homes where smoking is prohibited pursuant to Section 1596.795 of the Health and Safety Code.

(7) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(f) The smoking prohibition set forth in this section constitutes a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and owner-operated businesses and supersedes and renders unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment and owner-operated businesses. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent) places of employment and owner-operated businesses within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(g) This section does not prohibit an employer or owner-operator of an owner-operated business from prohibiting smoking of tobacco products in an enclosed place of employment or owner-operated business for any reason.

(h) The enactment of local regulation of smoking of tobacco products in enclosed places of employment or owner-operated businesses by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment and owner-operated businesses in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment and owner-operated businesses within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, an area not defined as a "place of employment" or in which smoking is not regulated pursuant to subdivision (e), is subject to local regulation of smoking of tobacco products.

(i) A violation of the prohibition set forth in subdivision (c) is an infraction, punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies, including, but not limited to, local health departments, as determined by the local governing body.

(j) Notwithstanding Section 6309, the division is not required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (i) of a third violation of subdivision (c) within the previous year.

(k) If a provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(l) For purposes of this section, "smoking" has the same meaning as in subdivision (c) of Section 22950.5 of the Business and Professions Code.

(m) For purposes of this section, "tobacco product" means a product or device as defined in subdivision (d) of Section 22950.5 of the Business and Professions Code.

(Amended by Stats. 2016, 2nd Ex. Sess., Ch. 7, Sec. 23.5. Effective June 9, 2016.)

6405. No employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment that is not safe and healthful.

(Repealed and added by Stats. 1973, Ch. 993.)

6406. No person shall do any of the following:

(a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.

(b) Interfere in any way with the use thereof by any other person.

(c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment.

(d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

(Repealed and added by Stats. 1973, Ch. 993.)

6407. Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

(Amended by Stats. 1977, Ch. 62.)

6408. All employers shall provide information to employees in the following ways, as prescribed by authorized regulations:

(a) Posting of information regarding protections and obligations of employees under occupational safety and health laws.

(b) Posting prominently each citation issued under Section 6317, or a copy or copies thereof, at or near each place a violation referred to in the notice of violation occurred.

(c) The opportunity for employees or their representatives to observe monitoring or measuring of employee exposure to hazards conducted pursuant to standards promulgated under Section 142.3.

(d) Allow access by employees or their representatives to accurate records of employee exposures to potentially toxic materials or harmful physical agents.

(e) Notification of any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels exceeding those prescribed by an applicable standard, order, or special order, and informing any employee so exposed of corrective action being taken.

(Repealed and added by Stats. 1973, Ch. 993.)

6409. (a) Every physician as defined in Section 3209.3 who attends any injured employee shall file a complete report of that occupational injury or occupational illness in a manner prescribed by the administrative director of the Division of Workers' Compensation. The report shall include a diagnosis, the injured employee's description of how the injury or illness occurred, any treatment rendered at the time of the examination, any work restrictions resulting from the injury or illness, a treatment plan, and other content as prescribed by the administrative director. The form shall be filed electronically with the Division of Workers' Compensation and the employer, or if insured, with the employer's insurer, within five days of the initial examination. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall also, within 24 hours of the initial examination, file a complete report with the local health officer by facsimile transmission or other means. If the treatment is for pesticide poisoning or a condition suspected to be pesticide poisoning, the physician shall not be compensated for the initial diagnosis and treatment unless the report is filed with the Division of Workers' Compensation, the employer, or if insured, with the employer's insurer, and includes or is accompanied by a signed affidavit which certifies that a copy of the report was filed with the local health officer pursuant to this section.

(b) As used in this section, "occupational illness" means any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

(Amended by Stats. 2016, Ch. 868, Sec. 13. Effective January 1, 2017.)

6409.1. (a) Every employer shall file a complete report of every occupational injury or occupational illness, as defined in subdivision (b) of Section 6409, of each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid, with the Department of Industrial Relations or, if an insured employer, with the insurer, on a form prescribed for that purpose by the department. A report shall be filed concerning each injury and illness which has, or is alleged to have, arisen out of and in the course of employment, within five days after the employer obtains knowledge of the injury or illness. Each report of occupational injury or occupational illness shall indicate the social security number of the injured employee. In the case of an insured employer, the insurer shall file with the division immediately upon receipt, a copy of the employer's report, which has been received from the insured employer. In the event an employer has filed a report of injury or illness pursuant to this subdivision and the employee subsequently dies as a result of the reported injury or illness, the employer shall file an amended report indicating the death with the department or, if an insured employer, with the insurer, within five days after the employer is notified or learns of the death. A copy of any amended reports received by the insurer shall be filed with the division immediately upon receipt.

(b) In every case involving a serious injury or illness, or death, in addition to the report required by subdivision (a), a report shall be made immediately by the employer to the Division of Occupational Safety and Health by telephone or email. An employer who violates this subdivision may be assessed a civil penalty of not less than five thousand dollars ($5,000). Nothing in this subdivision shall be construed to increase the maximum civil penalty, pursuant to Sections 6427 to 6430, inclusive, that may be imposed for a violation of this section.

(Amended by Stats. 2014, Ch. 91, Sec. 1. Effective January 1, 2015.)

6409.2. Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury or illness, or death occurs, the responding agency shall immediately notify the nearest office of the Division of Occupational Safety and Health by telephone. Thereafter, the division shall immediately notify the appropriate prosecuting authority of the accident.

(Amended by Stats. 2002, Ch. 885, Sec. 7. Effective January 1, 2003.)

6409.3. In no case shall the treatment administered for pesticide poisoning or a condition suspected as pesticide poisoning be deemed to be first aid treatment.

(Added by Stats. 1979, Ch. 889.)

6409.5. (a) Whenever any local public fire agency has knowledge that a place of employment where garment manufacturing operations take place contains fire or safety hazards for which fire and injury prevention measures have not been taken in accordance with local fire and life safety ordinances, the agency may notify the Division of Occupational Safety and Health. This referral shall be made only after the garment manufacturing employer has been given a reasonable amount of time to correct violations.

(b) Whenever the Division of Occupational Safety and Health has knowledge or reasonable suspicion that a place of employment

where garment manufacturing operations take place contains fire or safety hazards for which fire and injury prevention measures have not been taken in accordance with local fire and life safety ordinances, the division shall notify the appropriate local public fire agency.

(c) Whenever the Division of Occupational Safety and Health receives a referral by a local public fire agency pursuant to subdivision (a) which informs the division that a place of employment where garment manufacturing operations take place is not safe or is injurious to the welfare of any employee, it shall constitute a complaint for purposes of Section 6309 and shall be investigated.

(d) Whenever a local public fire agency receives a referral by the Division of Occupational Safety and Health pursuant to subdivision (b) which informs the local public fire agency that a place of employment where garment manufacturing operations take place is not safe or is injurious to the welfare of any employee, the local public fire agency may investigate the referral at its discretion.

(e) (1) If the Division of Occupational Safety and Health acquires knowledge that the garment manufacturing employer is not currently registered, it shall notify the Division of Labor Standards Enforcement.

(2) Local public fire agencies may make referrals of individuals not registered as garment manufacturers to the Division of Labor Standards Enforcement.

(3) Whenever the Division of Labor Standards Enforcement is informed by the Division of Occupational Safety and Health or by a local public fire agency that a garment manufacturing employer is unregistered, the Division of Labor Standards Enforcement shall take measures it deems appropriate to obtain compliance.

(Added by Stats. 1991, Ch. 7, Sec. 2. Effective December 13, 1990. Operative January 1, 1991, by Sec. 3 of Ch. 7.)

6410. (a) The reports required by subdivision (a) of Section 6409 and Section 6413 shall be made in the form and detail and within the time limits prescribed by reasonable rules and regulations adopted by the Department of Industrial Relations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Nothing in this chapter requiring recordkeeping and reporting by employers shall relieve the employer of maintaining records and making reports to the assistant secretary, United States Department of Labor, as required under the federal Occupational Safety and Health Act of 1970 (P.L. 91-596). The Division of Occupational Safety and Health shall prescribe and provide the forms necessary for maintenance of the required records, and shall enforce by citation and penalty assessment any violation of the recordkeeping requirements of this chapter.

(c) All state and local government employers shall maintain records and make reports in the same manner and to the same extent as required of other employers by this section.

(Amended by Stats. 2012, Ch. 46, Sec. 111. Effective June 27, 2012.)

6410.5. The reports required by subdivision (a) of Section 6409, subdivision (a) of Section 6409.1, and Section 6413 shall contain, prominently stated, the statement set forth in Section 5401.7.

(Added by Stats. 1991, Ch. 116, Sec. 34.)

6411. Every employer or insurer receiving forms with directions from the Department of Industrial Relations to complete them shall cause them to be properly filled out so as to answer fully and correctly each question propounded therein. In case of inability to answer any questions, a good and sufficient reason shall be given for such failure.

(Amended by Stats. 2012, Ch. 46, Sec. 112. Effective June 27, 2012.)

6412. No report of injury or illness required by subdivision (a) of Section 6409.1 shall be open to public inspection or made public, nor shall those reports be admissible as evidence in any adversary proceeding before the Workers' Compensation Appeals Board. However, the reports required of physicians by subdivision (a) of Section 6409 shall be admissible as evidence in the proceeding, except that no physician's report shall be admissible as evidence to bar proceedings for the collection of compensation, and the portion of any physician's report completed by an employee shall not be admissible as evidence in any proceeding before the Workers' Compensation Appeals Board.

(Amended by Stats. 1987, Ch. 1019, Sec. 7.)

6413. (a) The Department of Corrections and Rehabilitation, and every physician or surgeon who attends any injured state prisoner, shall file with the Division of Occupational Safety and Health a complete report, on forms prescribed under Sections 6409 and 6409.1, of every injury to each state prisoner, resulting from any labor performed by the prisoner unless disability resulting from such injury does not last through the day or does not require medical service other than ordinary first aid treatment.

(b) Where the injury results in death a report, in addition to the report required by subdivision (a), shall forthwith be made by the Department of Corrections and Rehabilitation to the Division of Occupational Safety and Health by telephone or telegraph.

(c) Except as provided in Section 6304.2, nothing in this section or in this code shall be deemed to make a prisoner an employee, for any purpose, of the Department of Corrections and Rehabilitation.

(d) Notwithstanding subdivision (a), no physician or surgeon who attends any injured state prisoner outside of a Department of Corrections and Rehabilitation institution shall be required to file the report required by subdivision (a), but the Department of Corrections and Rehabilitation shall file the report.

(Amended by Stats. 2012, Ch. 46, Sec. 113. Effective June 27, 2012.)

6413.2. (a) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may make recommendations to the Department of Corrections and Rehabilitation of ways in which the department might improve the safety of the working conditions and work areas of state prisoners, and other safety matters. The Department of Corrections and Rehabilitation shall not be required to comply with these recommendations.

(b) With regard to any report required by Section 6413, the Division of Occupational Safety and Health may, in any case in which the Department of Corrections and Rehabilitation has not complied with recommendations made by the division pursuant to subdivision (b), or in any other case in which the division deems the safety of any state prisoner shall require it, conduct hearings and, after these hearings, adopt special orders, rules, or regulations or otherwise proceed as authorized in Chapter 1 (commencing with Section 6300) of this part as it deems necessary. The Department of Corrections and Rehabilitation shall comply with any order, rule, or regulation so adopted by the Division of Occupational Safety and Health.

(Amended by Stats. 2012, Ch. 46, Sec. 114. Effective June 27, 2012.)

6413.5. Any employer or physician who fails to comply with any provision of subdivision (a) of Section 6409, or Section

6409.1, 6409.2, 6409.3, or 6410 may be assessed a civil penalty of not less than fifty dollars ($50) nor more than two hundred dollars ($200) by the director or his or her designee if he or she finds a pattern or practice of violations, or a willful violation of any of these provisions. Penalty assessments may be contested in the manner provided in Section 3725. Penalties assessed pursuant to this section shall be deposited in the General Fund.

(Amended by Stats. 1987, Ch. 1019, Sec. 8.)

Chapter 4. Penalties

(Chapter 4 repealed and added by Stats. 1973, Ch. 993.)

6423. (a) Except where another penalty is specifically provided, every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who does any of the following is guilty of a misdemeanor:

(1) Knowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in, or authorized by, this part the violation of which is deemed to be a serious violation pursuant to Section 6432.

(2) Repeatedly violates any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees.

(3) Knowingly fails to report to the division a death, as required by subdivision (b) of Section 6409.1.

(4) Fails or refuses to comply, after notification and expiration of any abatement period, with any such standard, order, special order, or provision of this division, or any part thereof, which failure or refusal creates a real and apparent hazard to employees.

(5) Directly or indirectly, knowingly induces another to commit any of the acts in paragraph (1), (2), (3), or (4) of subdivision (a).

(b) Any violation of paragraph (1) of subdivision (a) is punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed five thousand dollars ($5,000), or by both that imprisonment and fine.

(c) Any violation of paragraph (3) of subdivision (a) is punishable by imprisonment in county jail for up to one year, or by a fine not to exceed fifteen thousand dollars ($15,000), or by both that imprisonment and fine. If the violator is a corporation or a limited liability company, the fine prescribed by this subdivision may not exceed one hundred fifty thousand dollars ($150,000).

(d) Any violation of paragraph (2), (4), or (5) of subdivision (a) is punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding fifteen thousand dollars ($15,000), or by both that imprisonment and fine. If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars ($150,000).

(e) In determining the amount of fine to impose under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require.

(Amended by Stats. 2002, Ch. 885, Sec. 8. Effective January 1, 2003.)

6425. (a) Any employer and any employee having direction, management, control, or custody of any employment, place of employment, or of any other employee, who willfully violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee, is guilty of a public offense punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding one hundred thousand dollars ($100,000), or by both that imprisonment and fine; or by imprisonment in the state prison for 16 months, or two or three years, or by a fine of not more than two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; and in either case, if the defendant is a corporation or a limited liability company, the fine may not exceed one million five hundred thousand dollars ($1,500,000).

(b) If the conviction is for a violation committed within seven years after a conviction under subdivision (b), (c), or (d) of Section 6423 or subdivision (c) of Section 6430, punishment shall be by imprisonment in state prison for a term of 16 months, two, or three years, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment, but if the defendant is a corporation or limited liability company, the fine may not be less than five hundred thousand dollars ($500,000) or more than two million five hundred thousand dollars ($2,500,000).

(c) If the conviction is for a violation committed within seven years after a first conviction of the defendant for any crime involving a violation of subdivision (a), punishment shall be by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years, or by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment, but if the defendant is a corporation or a limited liability company, the fine shall not be less than one million dollars ($1,000,000) but may not exceed three million five hundred thousand dollars ($3,500,000).

(d) In determining the amount of fine to be imposed under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require.

(e) As used in this section, "willfully" has the same definition as it has in Section 7 of the Penal Code. This subdivision is intended to be a codification of existing law.

(f) This section does not prohibit a prosecution under Section 192 of the Penal Code.

(Amended by Stats. 2011, Ch. 15, Sec. 222. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

6426. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this division shall, upon conviction, be punished by a fine of not more than seventy thousand dollars ($70,000), or by imprisonment for not more than six months, or by both.

(Amended by Stats. 1991, Ch. 599, Sec. 3. Effective October 7, 1991.)

6427. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars ($7,000) for each violation.

(Amended by Stats. 1993, Ch. 928, Sec. 3. Effective January 1, 1994.)

6428. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars ($25,000) for each violation. Employers who do not have an

operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

(Amended by Stats. 1999, Ch. 615, Sec. 7. Effective January 1, 2000.)

6428.5. An employer's injury prevention program shall be deemed to be operative for the purposes of Sections 6427 and 6428 if it meets the criteria for substantial compliance established by the standards board pursuant to Section 6401.7.

(Added by Stats. 1989, Ch. 1369, Sec. 13. Effective October 2, 1989.)

6429. (a) Any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than seventy thousand dollars ($70,000) for each violation, but in no case less than five thousand dollars ($5,000) for each willful violation.

(b) Any employer who repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, shall not receive any adjustment of a penalty assessed pursuant to this section on the basis of the regulations promulgated pursuant to subdivision (c) of Section 6319 pertaining to the good faith of the employer or the history of previous violations of the employer.

(c) The division shall preserve and maintain records of its investigations and inspections and citations for a period of not less than seven years.

(Amended by Stats. 2000, Ch. 135, Sec. 128. Effective January 1, 2001.)

6430. (a) Any employer who fails to correct a violation of any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, within the period permitted for its correction shall be assessed a civil penalty of not more than fifteen thousand dollars ($15,000) for each day during which the failure or violation continues.

(b) Notwithstanding subdivision (a), for any employer who submits a signed statement affirming compliance with the abatement terms pursuant to Section 6320, and is found upon a reinspection not to have abated the violation, any adjustment to the civil penalty based on abatement shall be rescinded and the additional civil penalty assessed for failure to abate shall not be adjusted for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

(c) Notwithstanding subdivision (a), any employer who submits a signed statement affirming compliance with the abatement terms pursuant to subdivision (b) of Section 6320, and is found not to have abated the violation, is guilty of a public offense punishable by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding thirty thousand dollars ($30,000), or by both that fine and imprisonment; but if the defendant is a corporation or a limited liability company the fine shall not exceed three hundred thousand dollars ($300,000). In determining the amount of the fine to be imposed under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation, any prior history of violations by the defendant, the ability of the defendant to pay, and any other matters the court determines the interests of justice require. Nothing in this section shall be construed to prevent prosecution under any law that may apply.

(Amended by Stats. 1999, Ch. 615, Sec. 9. Effective January 1, 2000.)

6431. Any employer who violates any of the posting or recordkeeping requirements as prescribed by regulations adopted pursuant to Sections 6408 and 6410, or who fails to post any notice required by Section 3550, shall be assessed a civil penalty of up to seven thousand dollars ($7,000) for each violation.

(Amended by Stats. 1991, Ch. 599, Sec. 8. Effective October 7, 1991.)

6432. (a) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:

(1) A serious exposure exceeding an established permissible exposure limit.

(2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

(b) (1) Before issuing a citation alleging that a violation is serious, the division shall make a reasonable attempt to determine and consider, among other things, all of the following:

(A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards.

(B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards.

(C) Supervision of employees exposed or potentially exposed to the hazard.

(D) Procedures for communicating to employees about the employer's health and safety rules and programs.

(E) Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:

(i) The employer's explanation of the circumstances surrounding the alleged violative events.

(ii) Why the employer believes a serious violation does not exist.

(iii) Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut, pursuant to subdivision (c), any presumption established pursuant to subdivision (a).

(iv) Any other information that the employer wishes to provide.

(2) The division shall satisfy its requirement to determine and consider the facts specified in paragraph (1) if, not less than 15 days prior to issuing a citation for a serious violation, the division delivers to the employer a standardized form containing the alleged violation descriptions ("AVD") it intends to cite as serious and clearly soliciting the information specified in this subdivision. The director shall prescribe the form for the alleged violation descriptions and solicitation of information. Any forms issued pursuant to this section shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) If the division establishes a presumption pursuant to subdivision (a) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in

connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b).

(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(d) If the employer does not provide information in response to a division inquiry made pursuant to subdivision (b), the employer shall not be barred from presenting that information at the hearing and no negative inference shall be drawn. The employer may offer different information at the hearing than what was provided to the division and may explain any inconsistency, but the trier of fact may draw a negative inference from the prior inconsistent factual information. The trier of fact may also draw a negative inference from factual information offered at the hearing by the division that is inconsistent with factual information provided to the employer pursuant to subdivision (b), or from a failure by the division to provide the form setting forth the descriptions of the alleged violation and soliciting information pursuant to subdivision (b).

(e) "Serious physical harm," as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:

(1) Inpatient hospitalization for purposes other than medical observation.

(2) The loss of any member of the body.

(3) Any serious degree of permanent disfigurement.

(4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(f) Serious physical harm may be caused by a single, repetitive practice, means, method, operation, or process.

(g) A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that his or her division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

(Repealed and added by Stats. 2010, Ch. 692, Sec. 2. Effective January 1, 2011.)

6433. The civil penalties set forth in Sections 6427 to 6431, inclusive, shall not be considered as other penalties specifically provided within the meaning of Section 6423.

(Added by Stats. 1973, Ch. 993.)

6434. (a) Any civil or administrative penalty assessed pursuant to this chapter against a school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions shall be deposited with the Workplace Health and Safety Revolving Fund established pursuant to Section 78.

(b) Any school district, county board of education, county superintendent of schools, charter school, community college district, California State University, University of California, or joint powers agency performing education functions may apply for a refund of their civil penalty, with interest, if all conditions previously cited have been abated, they have abated any other outstanding citation, and if they have not been cited by the division for a serious violation at the same school within two years of the date of the original violation. Funds not applied for within two years and six months of the time of the original violation shall be expended as provided for in Section 78 to assist schools in establishing effective occupational injury and illness prevention programs.

(Amended by Stats. 2000, Ch. 135, Sec. 129. Effective January 1, 2001.)

6434.5. (a) Any civil or administrative penalty assessed pursuant to this chapter against a public police or city, county, or special district fire department or the California Department of Forestry and Fire Protection shall be deposited into the Workers' Compensation Administration Revolving Fund established pursuant to Section 62.5.

(b) Any public police or city, county, or special district fire department or the California Department of Forestry and Fire Protection may apply for a refund of any civil or administrative penalty assessed pursuant to this chapter, with interest, if all conditions previously cited have been abated, the department has abated any other outstanding citation, and the department has not been cited by the division for a serious violation within two years of the date of the original violation. Funds received as a result of a penalty, for which a refund is not applied for within two years and six months of the time of the original violation, shall be expended in accordance with Section 78 as follows:

(1) Funds received as a result of a civil or administrative penalty imposed on a city, county, or special district fire department or the California Department of Forestry and Fire Protection shall be allocated to the California Firefighter Joint Apprenticeship Program for the purpose of establishing and maintaining effective occupational injury and illness prevention programs.

(2) Funds received as a result of a civil or administrative penalty imposed on a police department shall be allocated to the Office of Criminal Justice Planning, or any succeeding agency, for the purpose of establishing and maintaining effective occupational injury and illness prevention programs.

(c) This section does not apply to that portion of any civil or administrative penalty that is distributed directly to an aggrieved employee or employees pursuant to the provisions of Section 2699.

(Added by Stats. 2005, Ch. 141, Sec. 1. Effective January 1, 2006.)

6435. (a) Any employer who violates any of the requirements of Chapter 6 (commencing with Section 6500) of this part shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive.

(b) This section shall become inoperative on January 1, 1987, and shall remain inoperative until January 1, 1991, at which time it shall become operative, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends that date.

(Amended by Stats. 1986, Ch. 1178, Sec. 3. Note: This section was inoperative from Jan. 1, 1987, until Jan. 1, 1991, by its own provisions.)

6436. The criminal complaint regarding a violation of Section 6505.5 may be brought by the Attorney General or by the district attorney or prosecuting attorney of any city, in the superior court of any county in the state with jurisdiction over the contractor or employer, by reason of the contractor's or employer's act or failure to act within that county. Any penalty assessed by the court shall be paid to the office of the prosecutor bringing the complaint, but if the case was referred to the prosecutor by the

division, or some other governmental unit, one-half of the civil or criminal penalty assessed shall be paid to that governmental unit.

(Amended by Stats. 2003, Ch. 449, Sec. 30. Effective January 1, 2004.)

Chapter 5. Temporary Variances

(Chapter 5 added by Stats. 1973, Ch. 993.)

6450. (a) Any employer may apply to the division for a temporary order granting a variance from an occupational safety or health standard. Such temporary order shall be granted only if the employer files an application which meets the requirements of Section 6451, and establishes that (1) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (2) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (3) he has an effective program for coming into compliance with the standard as quickly as practicable.

(b) Any temporary order issued under this section shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing. However, the division may issue one interim order for a temporary variance upon submission of an application showing that the employment or place of employment will be safe for employees pending a hearing on the application for a temporary variance. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice provided that the requirements of this section are met and an application for renewal is filed prior to the expiration date of the order. No single renewal of an order may remain in effect for longer than 180 days.

(Added by Stats. 1973, Ch. 993.)

6451. An application for a temporary order under Section 6450 shall contain all of the following:

(a) A specification of the standard or portion thereof from which the employer seeks a variance.

(b) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor.

(c) A statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard.

(d) A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard.

(e) A certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the division for a hearing.

(Added by Stats. 1973, Ch. 993.)

6452. The division is authorized to grant a temporary variance from any standard or portion thereof whenever it determines such variance is necessary to permit an employer to participate in an experiment approved by the director designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(Added by Stats. 1973, Ch. 993.)

6454. The division may, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, make such rules and regulations as are reasonably necessary to carry out the provisions of this chapter and to establish rules and regulations relating to the granting or denial of temporary variances.

(Amended by Stats. 1983, Ch. 142, Sec. 116.)

6455. Any employer or other person adversely affected by the granting or denial of a temporary variance may appeal to the standards board within 15 working days from receipt of the notice granting or denying the variance. The 15-day period may be extended by the standards board for good cause.

(Added by Stats. 1973, Ch. 993.)

6456. A decision of the standards board on a variance appeal is binding on the director and the division with respect to the parties involved in the particular appeal. The director shall have the right to seek judicial review of a standards board decision irrespective of whether he appeared or participated in the appeal to the standards board.

(Added by Stats. 1973, Ch. 993.)

6457. The standards board shall conduct hearings and render decisions on appeals of decisions of the division relating to allowance or denial of temporary variances. All board decisions on such variance appeals shall be in writing and shall be final except for any rehearing or judicial review.

(Added by Stats. 1973, Ch. 993.)

Chapter 6. Permit Requirements

(Chapter 6 added by Stats. 1973, Ch. 993.)

6500. (a) For those employments or places of employment that by their nature involve a substantial risk of injury, the division shall require the issuance of a permit prior to the initiation of any practices, work, method, operation, or process of employment. The permit requirement of this section is limited to employment or places of employment that are any of the following:

(1) Construction of trenches or excavations that are five feet or deeper and into which a person is required to descend.

(2) The construction of any building, structure, falsework, or scaffolding more than three stories high or the equivalent height.

(3) The demolition of any building, structure, falsework, or scaffold more than three stories high or the equivalent height.

(4) The underground use of diesel engines in work in mines and tunnels.

This subdivision does not apply to motion picture, television, or theater stages or sets, including, but not limited to, scenery, props, backdrops, flats, greenbeds, and grids.

(b) On or after January 1, 2000, this subdivision shall apply to motion picture, television, or theater stages or sets, if there has occurred within any one prior calendar year in any combination at separate locations three serious injuries, fatalities, or serious violations related to the construction or demolition of sets more

than 36 feet in height for the motion picture, television, and theatrical production industry.

An annual permit shall be required for employers who construct or dismantle motion picture, television, or theater stages or sets that are more than three stories or the equivalent height. A single permit shall be required under this subdivision for each employer, regardless of the number of locations where the stages or sets are located. An employer with a currently valid annual permit issued under this subdivision shall not be required to provide notice to the division prior to commencement of any work activity authorized by the permit. The division may adopt procedures to permit employers to renew by mail the permits issued under this subdivision. For purposes of this subdivision, "motion picture, television, or theater stages or sets" include, but are not limited to, scenery, props, backdrops, flats, greenbeds, and grids.

(Amended by Stats. 1997, Ch. 17, Sec. 92. Effective January 1, 1998.)

6501. Any employer subject to Section 6500 shall apply to the division for a permit pursuant to Section 6500. Such application for a permit shall contain such information as the division may deem necessary to evaluate the safety of the proposed employment or place of employment.

An application by an employer shall include a provision that the applicant has knowledge of applicable occupational safety and health standards and will comply with such standards and any other lawful order of the division.

(Repealed and added by Stats. 1973, Ch. 993.)

6501.5. Effective January 1, 1987, any employer or contractor who engages in asbestos-related work, as defined in Section 6501.8, and which involves 100 square feet or more of surface area of asbestos-containing material, shall register with the division.

The division may grant registration based on a determination that the employer has demonstrated evidence that the conditions, practices, means, methods, operations, or processes used, or proposed to be used, will provide a safe and healthful place of employment. This section is not intended to supersede existing laws and regulations under Title 8, California Administrative Code, Section 5208.

An application for registration shall contain such information and attachments, given under penalty of perjury, as the division may deem necessary to evaluate the safety and health of the proposed employment or place of employment. It shall include, but not be limited to, all of the following:

(a) Every employer shall meet each of the following criteria:

(1) If the employer is a contractor, the contractor shall be certified pursuant to Section 7058.5 of the Business and Professions Code.

(2) Provide health insurance coverage to cover the entire cost of medical examinations and monitoring required by law and be insured for workers' compensation, or provide a five hundred dollar ($500) trust account for each employee engaged in asbestos-related work. The health insurance coverage may be provided through a union, association, or employer.

(3) Train and certify all employees in accordance with all training required by law and Title 8 of the California Administrative Code.

(4) Be proficient and have the necessary equipment to safely do asbestos-related work.

(b) Provide written notice to the division of each separate job or phase of work, where the work process used is different or the work is performed at noncontiguous locations, noting all of the following:

(1) The address of the job.

(2) The exact physical location of the job at that address.

(3) The start and projected completion date.

(4) The name of a certified supervisor with sufficient experience and authority who shall be responsible for the asbestos-related work at that job.

(5) The name of a qualified person, who shall be responsible for scheduling any air sampling, laboratory calibration of air sampling equipment, evaluation of sampling results, and conducting respirator fit testing and evaluating the results of those tests.

(6) The type of work to be performed, the work practices that will be utilized, and the potential for exposure.

Should any change be necessary, the employer or contractor shall so inform the division at or before the time of the change. Any oral notification shall be confirmed in writing.

(c) Post the location where any asbestos-related work occurs so as to be readable at 20 feet stating, "Danger—Asbestos. Cancer and Lung Hazard. Keep Out."

(d) A copy of the registration shall be provided before the start of the job to the prime contractor or other employers on the site and shall be posted on the jobsite beside the Cal-OSHA poster.

(e) The division shall obtain the services of three industrial hygienists and one clerical employee to implement and to enforce the requirements of this section unless the director makes a finding that these services are not necessary or that the services are not obtainable due to a lack of qualified hygienists applying for available positions. Funding may, at the director's discretion, be appropriated from the Asbestos Abatement Fund.

(f) Not later than January 1, 1987, the Division of Occupational Safety and Health shall propose to the Occupational Safety and Health Standards Board for review and adoption a regulation concerning asbestos-related work, as defined in Section 6501.8, which involves 100 square feet or more of surface area of asbestos-containing material. The regulation shall protect most effectively the health and safety of employees and shall include specific requirements for certification of employees, supervisors with sufficient experience and authority to be responsible for asbestos-related work, and a qualified person who shall be responsible for scheduling any air sampling, for arranging for calibration of the air sampling equipment and for analysis of the air samples by a NIOSH approved method, for conducting respirator fit testing, and for evaluating the results of the air sampling.

The Division of Occupational Safety and Health shall also propose a regulation to the Occupational Safety and Health Standards Board for review and adoption specifying sampling methodology for use in taking air samples.

(Amended by Stats. 1986, Ch. 1451, Sec. 10. Effective September 30, 1986.)

6501.7. "Asbestos" means fibrous forms of various hydrated minerals, including chrysotile (fibrous serpentine), crocidolite (fibrous riebecktite), amosite (fibrous cummingtonite—grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.

(Added by Stats. 1985, Ch. 1587, Sec. 11. Effective October 2, 1985.)

6501.8. (a) For purposes of this chapter, "asbestos-related work" means any activity which by disturbing asbestos-containing construction materials may release asbestos fibers into the air and which is not related to its manufacture, the mining or excavation of asbestos-bearing ore or materials, or the installation or repair of automotive materials containing asbestos.

(b) For purposes of this chapter, "asbestos containing construction material" means any manufactured construction

material that contains more than one-tenth of 1 percent asbestos by weight.

(c) For purposes of this chapter, "asbestos-related work" does not include the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe used outside of buildings, if the installation, repair, maintenance, or nondestructive removal of asbestos cement pipe does not result in asbestos exposures to employees in excess of the action level determined in accordance with Sections 1529 and 5208 of Title 8 of the California Code of Regulations, and if the employees and supervisors involved in the operation have received training through a task-specific training program, approved pursuant to Section 9021.9, with written certification of completion of that training by the training entity responsible for the training.

(Amended by Stats. 1993, Ch. 1075, Sec. 1. Effective January 1, 1994.)

6501.9. The owner of a commercial or industrial building or structure, employer, or contractor who engages in, or contracts for, asbestos-related work shall make a good faith effort to determine if asbestos is present before the work is begun. The contractor or employer shall first inquire of the owner if asbestos is present in any building or structure built prior to 1978.

(Amended by Stats. 1986, Ch. 1451, Sec. 12. Effective September 30, 1986.)

6502. The division may issue a permit based on a determination the employer has demonstrated evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used will provide a safe and healthful place of employment. The division may issue a single permit for two or more projects to be performed by a single employer if similar conditions exist on each project and the chief or his representative is satisfied an adequate safety program has been developed for all the projects. The division may, upon its motion, conduct any investigation or hearing it deems necessary for the purpose of this section, and may require a safety conference prior to the start of actual work.

(Repealed and added by Stats. 1973, Ch. 993.)

6503. A safety conference shall include representatives of the owner or contracting agency, the contractor, the employer, employees and employee representatives. The safety conference shall include a discussion of the employer's safety program and such means, methods, devices, processes, practices, conditions or operations as he intends to use in providing safe employment and a safe place of employment.

(Repealed and added by Stats. 1973, Ch. 993.)

6503.5. A safety conference shall be held for all asbestos handling jobs prior to the start of actual work. It shall include representatives of the owner or contracting agency, the contractor, the employer, employees, and employee representatives. It shall include a discussion of the employer's safety program and such means, methods, devices, processes, practices, conditions, or operations as the employer intends to use in providing a safe place of employment.

(Added by Stats. 1985, Ch. 1587, Sec. 13. Effective October 2, 1985.)

6504. Any employer issued a permit pursuant to this chapter shall post a copy or copies of the permit pursuant to subdivision (a) of Section 6408.

(Repealed and added by Stats. 1973, Ch. 993.)

6505. The division may at any time, upon good cause being shown therefor, and after notice and an opportunity to be heard revoke any permit issued pursuant to this chapter.

(Repealed and added by Stats. 1973, Ch. 993.)

6505.5. (a) The division may, upon good cause shown, and after notice to the employer or contractor by the division and an opportunity to be heard, revoke or suspend any registration issued to the employer or contractor to do asbestos-related work until certain specified written conditions are met.

(b) Any person who owns a commercial or industrial building or structure, any employer who engages in or contracts for asbestos-related work, any contractor, public agency, or any employee acting for any of the foregoing, who, contracts for, or who begins, asbestos-related work in any commercial or industrial building or structure built prior to 1978 without first determining if asbestos-containing material is present, and thereby fails to comply with the applicable laws and regulations, is subject to one of the following penalties:

(1) For a knowing or negligent violation, a fine of not more than five thousand dollars ($5,000) or imprisonment in the county jail for not more than six months, or both the fine and imprisonment.

(2) For a willful violation which results in death, serious injury or illness, or serious exposure, a fine of not more than ten thousand dollars ($10,000) or imprisonment in the county jail for not more than one year, or both the fine and imprisonment. A second or subsequent conviction under this paragraph may be punishable by a fine of not more than twenty thousand dollars ($20,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(3) A civil penalty of not more than two thousand dollars ($2,000) for each violation, to be imposed pursuant to the procedures set forth in Sections 6317, 6318, and 6319.

(4) For a willful or repeat violation, a civil penalty of not more than twenty thousand dollars ($20,000) for each violation.

(c) It is a defense to an action for violation of this section if the owner, contractor, employer, public agency, or agent thereof, proves, by a preponderance of the evidence, that he or she made a reasonable effort to determine whether asbestos was present.

(Amended by Stats. 1986, Ch. 1451, Sec. 13. Effective September 30, 1986.)

6506. (a) Any employer denied a permit upon application, or whose permit is revoked, may appeal such denial or revocation to the director.

(b) The filing of an appeal to the director from a permit revocation by the division shall not stay the revocation. Upon application by the employer with proper notice to the division, and after an opportunity for the division to respond to the application, the director may issue an order staying the revocation while the appeal is pending.

(Amended by Stats. 1978, Ch. 1222.)

6507. The division shall set fees to be charged for permits and registrations in amounts reasonably necessary to cover the costs involved in administering the permitting and registration programs in this chapter. All permit and registration fees collected under this chapter shall be deposited in the Occupational Safety and Health Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 195. Effective June 27, 2016.)

6508. No permit shall be required of the State of California, a city, city and county, county, district, or public utility subject to the jurisdiction of the Public Utilities Commission.

(Repealed and added by Stats. 1973, Ch. 993.)

6508.5. No entity shall be exempt from registration. The State of California, a city, city and county, county, district, or public utility subject to the jurisdiction of the Public Utilities Commission, shall be required to apply for a registration through the designated chief executive officer of that body. No registration fees shall be required of any public agencies.

(Added by Stats. 1985, Ch. 1587, Sec. 15. Effective October 2, 1985.)

6509. Any person, or agent or officer thereof, who violates this chapter is guilty of a misdemeanor.

(Added by Stats. 1976, Ch. 33.)

6509.5. (a) If an asbestos consultant has made an inspection for the purpose of determining the presence of asbestos or the need for related remedial action with knowledge that the report has been required by a person as a condition of making a loan of money secured by the property, or is required by a public entity as a condition of issuing a permit concerning the property, the asbestos consultant or any employee, subsidiary, or any company with common ownership, shall not require, as a condition of performing the inspection, that the consultant also perform any corrective work on the property that was recommended in the report.

(b) This section does not prohibit an asbestos consultant that has contracted to perform corrective work after the report of another company has indicated the presence of asbestos or the need for related remedial action from making its own inspection prior to performing that corrective work or from making an inspection to determine whether the corrective measures were successful and, if not, thereafter performing additional corrective work.

(c) A violation of this section is grounds for disciplinary action against any asbestos consultant who engages in that work pursuant to any license from a state agency.

(d) A violation of this section is a misdemeanor punishable by a fine of not less than three thousand dollars ($3,000) and not more than five thousand dollars ($5,000), or by imprisonment in the county jail for not more than one year, or both.

(e) For the purpose of this section:

(1) "Asbestos consultant" means any person who, for compensation, inspects property to identify asbestos containing materials, determining the risks, or the need for related remedial action.

(2) "Asbestos" has the meaning set forth in Section 6501.7.

(Added by Stats. 1988, Ch. 1491, Sec. 2.)

6510. (a) If, after inspection or investigation, the division finds that an employer, without a valid permit, is engaging in activity for which a permit is required, it may, through its attorneys, apply to the superior court of the county in which such activity is taking place for an injunction restraining such activity.

(b) The application to the superior court, accompanied by an affidavit showing that the employer, without a valid permit, is engaging in activity for which a permit is required, is a sufficient prima facie showing to warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required of the division as a prerequisite to the granting of any restraining order.

(Added by Stats. 1978, Ch. 1222.)

Chapter 7. Appeal Proceedings

(Chapter 7 added by Stats. 1973, Ch. 993.)

6600. Any employer served with a citation or notice pursuant to Section 6317, or a notice of proposed penalty under this part, or any other person obligated to the employer as specified in subdivision (b) of Section 6319, may appeal to the appeals board within 15 working days from the receipt of such citation or such notice with respect to violations alleged by the division, abatement periods, amount of proposed penalties, and the reasonableness of the changes required by the division to abate the condition.

(Amended by Stats. 1976, Ch. 1404.)

6600.5. Any employer served with a special order or any action order by the division pursuant to Section 6308, or any other person obligated to the employer as specified in subdivision (b) of Section 6319, may appeal to the appeals board within 15 working days from the receipt of the order with respect to the action ordered by the division, abatement periods, the reasonableness of the changes required by the division to abate the condition.

(Added by Stats. 1984, Ch. 1138, Sec. 4.)

6601. If within 15 working days from receipt of the citation or notice of civil penalty issued by the division, the employer fails to notify the appeals board that he intends to contest the citation or notice of proposed penalty, and no notice contesting the abatement period is filed by any employee or representative of the employee within such time, the citation or notice of proposed penalty shall be deemed a final order of the appeals board and not subject to review by any court or agency. The 15-day period may be extended by the appeals board for good cause.

(Amended by Stats. 1974, Ch. 1284.)

6601.5. If, within 15 working days from receipt of a special order, or action order by the division, the employer fails to notify the appeals board that he or she intends to contest the order, and no notice contesting the abatement period is filed by any employee or representative of the employee within that time, the order shall be deemed a final order of the appeals board and not subject to review by any court or agency. The 15-day period may be extended by the appeals board for good cause.

(Added by Stats. 1984, Ch. 1138, Sec. 5.)

6602. If an employer notifies the appeals board that he or she intends to contest a citation issued under Section 6317, or notice of proposed penalty issued under Section 6319, or order issued under Section 6308, or if, within 15 working days of the issuance of a citation or order any employee or representative of an employee files a notice with the division or appeals board alleging that the period of time fixed in the citation or order for the abatement of the violation is unreasonable, the appeals board shall afford an opportunity for a hearing. The appeals board shall thereafter issue a decision, based on findings of fact, affirming, modifying or vacating the division's citation, order, or proposed penalty, or directing other appropriate relief.

(Amended by Stats. 1984, Ch. 1138, Sec. 6.)

6603. (a) The rules of practice and procedure adopted by the appeals board shall be consistent with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11507, 11507.6, 11507.7, 11513, 11514, 11515, and 11516 of, the Government Code, and shall provide affected employees or representatives of affected employees an opportunity to participate as parties to a hearing under Section 6602.

(b) The superior courts shall have jurisdiction over contempt proceedings, as provided in Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1995, Ch. 938, Sec. 78.5. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)

6604. The appeals board may, in accordance with rules of practice and procedure which it shall adopt, direct and order a hearing officer:

(a) To try the issues in any proceeding before it, whether of fact or of law, and make and file a finding, order, or decision based thereon.

(b) To hold hearings and ascertain facts necessary to enable the appeals board to determine any proceeding or to make any

order or decision that the appeals board is authorized to make, or necessary for the information of the appeals board.

(Repealed and added by Stats. 1973, Ch. 993.)

6605. The appeals board may appoint one or more hearing officers in any proceeding, as it may deem necessary or advisable, and may defer, remove to itself, or transfer to a hearing officer the proceedings on any appeal. Any hearing officer appointed by the appeals board has the powers, jurisdiction, and authority granted by law, by the order of appointment, and by the rules of the appeals board.

(Added by Stats. 1973, Ch. 993.)

6606. Any party to the proceeding may object to the reference of the proceeding to a particular hearing officer upon any one or more of the grounds specified in Section 641 of the Code of Civil Procedure and such objection shall be heard and disposed of by the appeals board. Affidavits may be read and witnesses examined as to such objections.

(Added by Stats. 1973, Ch. 993.)

6607. Before entering upon his duties, the hearing officer shall be sworn, before an officer authorized to administer oaths, faithfully and fairly to hear and determine the matters and issues referred to him, to make just findings and to report according to his understanding. In any proceedings under this chapter, the hearing officer shall have the power to administer oaths and affirmations and to certify official acts.

(Added by Stats. 1973, Ch. 993.)

6608. The appeals board or a hearing officer shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the appeal and file an order or decision. Together with the findings or the decision, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the decision was made.

(Added by Stats. 1973, Ch. 993.)

6609. Within 30 days after the filing of the findings, decision, or order, the appeals board may confirm, adopt, modify or set aside the findings, order, or decision of a hearing officer and may, with or without further proceedings, and with or without notice, enter its order, findings, or decision based upon the record in the case.

(Added by Stats. 1973, Ch. 993.)

6610. Any notice, order, or decision required by this part to be served upon any person either before, during, or after the institution of any proceeding before the appeals board, shall be served in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure, unless otherwise directed by the appeals board. In the latter event the document shall be served in accordance with the order or direction of the appeals board. The appeals board may, in the cases mentioned in the Code of Civil Procedure, order service to be made by publication of notice of time and place of hearing. Where service is ordered to be made by publication the date of the hearing shall be fixed at more than 30 days from the date of filing the application.

(Added by Stats. 1973, Ch. 993.)

6611. (a) If the employer fails to appear, the appeals board may dismiss the appeal or may take action upon the employer's express admissions or upon other evidence, and affidavits may be used without any notice to the employer. Where the burden of proof is upon the employer to establish the appeals board action sought, the appeals board may act without taking evidence. Nothing in this section shall be construed to deprive the employer of the right to make any showing by way of mitigation.

(b) The appeal may be reinstated by the appeals board upon a showing of good cause by the employer for his failure to appear.

(Amended by Stats. 1974, Ch. 1284.)

6612. No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, or finding made and filed as specified in this division. No order, decision, or finding shall be invalidated because of the admission into the record, and use as proof of any fact in dispute of any evidence not admissible under the common law or statutory rules of evidence and procedure.

(Added by Stats. 1973, Ch. 993.)

6613. The appeals board, a hearing officer, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a hearing officer in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear similar matters in such other jurisdictions.

(Amended by Stats. 2004, Ch. 182, Sec. 48. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

6614. (a) At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any party aggrieved directly or indirectly by any final order or decision, made and filed by the appeals board or a hearing officer under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order or decision and specified in the petition for reconsideration. Such petition shall be made only within the time and in the manner specified in this chapter.

(b) At any time within 30 days after the filing of an order or decision made by a hearing officer and the accompanying report, the appeals board may, on its own motion, grant reconsideration.

(Amended by Stats. 1974, Ch. 1284.)

6615. No cause of action arising out of any final order or decision made and filed by the appeals board or a hearing officer shall accrue in any court to any person until and unless the appeals board on its own motion sets aside such final order or decision and removes such proceeding to itself or such person files a petition for reconsideration, and such reconsideration is granted or denied. Nothing herein contained shall prevent the enforcement of any such final order or decision, in the manner provided in this division.

(Added by Stats. 1973, Ch. 993.)

6616. The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order or decision made and filed by the appeals board or a hearing officer to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.

(Added by Stats. 1973, Ch. 993.)

6617. The petition for reconsideration may be based upon one or more of the following grounds and no other:

(a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.

(b) That the order or decision was procured by fraud.

(c) That the evidence does not justify the findings of fact.

(d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) That the findings of fact do not support the order or decision.

(Amended by Stats. 1974, Ch. 1284.)

6618. The petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration.

(Added by Stats. 1973, Ch. 993.)

6619. A copy of the petition for reconsideration shall be served forthwith upon all parties by the person petitioning for reconsideration. Any party may file an answer thereto within 30 days thereafter. Such answer shall likewise be verified. The appeals board may require the petition for reconsideration to be served on other persons designated by it.

(Amended by Stats. 1979, Ch. 344.)

6620. Upon the filing of a petition for reconsideration, or having granted reconsideration upon its own motion, the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order or decision made and filed by the appeals board or hearing officer on the basis of the evidence previously submitted in the case, or may grant reconsideration and direct the taking of additional evidence. Notice of the time and place of any hearing on reconsideration shall be given to the petitioner and adverse parties and to such other persons as the appeals board orders.

(Added by Stats. 1973, Ch. 993.)

6621. If at the time of granting reconsideration, it appears to the satisfaction of the appeals board that no sufficient reason exists for taking further testimony, the appeals board may affirm, rescind, alter or amend the order or decision made and filed by the appeals board or hearing officer and may, without further proceedings, without notice, and without setting a time and place for further hearing, enter its findings, order or decision based upon the record in the case.

(Added by Stats. 1973, Ch. 993.)

6622. After the taking of additional evidence and a consideration of all of the facts the appeals board may affirm, rescind, alter, or amend the original order or decision. An order or decision made following reconsideration which affirms, rescinds, alters, or amends the original order or decision shall be made by the appeals board but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the appeals board.

(Added by Stats. 1973, Ch. 993.)

6623. Any decision of the appeals board granting or denying a petition for reconsideration or affirming, rescinding, altering, or amending the original findings, order, or decision following reconsideration shall be made by the appeals board and not by a hearing officer and shall be in writing, signed by a majority of the appeals board members assigned thereto, and shall state the evidence relied upon and specify in detail the reasons for the decision.

(Added by Stats. 1973, Ch. 993.)

6624. A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 45 days from the date of filing. The appeals board may, upon good cause being shown therefor, extend the time within which it may act upon that petition for not exceeding 15 days.

(Amended by Stats. 1991, Ch. 734, Sec. 1.)

6625. (a) (1) Except as provided in subdivision (b), the filing of a petition for reconsideration suspends for a period of 10 days the order or decision affected, insofar as it applies to the parties to the petition, unless otherwise ordered by the appeals board.

(2) Except as provided in subdivision (b), the appeals board, upon the terms and conditions which it by order directs, may stay, suspend, or postpone the order or decision during the pendency of the reconsideration.

(b) The filing of a petition for, or the pendency of, reconsideration of a final order or decision involving a citation classified as serious, repeat serious, or willful serious does not stay or suspend the requirement to abate the hazards affirmed by the decision or order unless the employer demonstrates by a preponderance of the evidence that a stay or suspension of abatement will not adversely affect the health and safety of employees. The employer must request a stay or suspension of abatement by filing a written, verified petition with supporting declarations within 10 days after the issuance of the order or decision.

(Amended by Stats. 2015, Ch. 303, Sec. 381. Effective January 1, 2016.)

6626. Nothing contained in this chapter shall be construed to prevent the appeals board, on petition of an aggrieved party or on its own motion, from granting reconsideration of an original order or decision made and filed by the appeals board within the same time specified for reconsideration of an original order or decision.

(Added by Stats. 1973, Ch. 993.)

6627. Any person affected by an order or decision of the appeals board may, within the time limit specified in this section, apply to the superior court of the county in which he resides, for a writ of mandate, for the purpose of inquiring into and determining the lawfulness of the original order or decision or of the order or decision following reconsideration. The application for writ of mandate must be made within 30 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeals board's own motion, within 30 days after the filing of the order or decision following reconsideration.

(Added by Stats. 1973, Ch. 993.)

6628. The writ of mandate shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board, as certified to by it.

(Added by Stats. 1973, Ch. 993.)

6629. The review by the court shall not be extended further than to determine, based upon the entire record which shall be certified by the appeals board, whether:

(a) The appeals board acted without or in excess of its powers.

(b) The order or decision was procured by fraud.

(c) The order or decision was unreasonable.

(d) The order or decision was not supported by substantial evidence.

(e) If findings of fact are made, such findings of fact support the order or decision under review.

Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

(Added by Stats. 1973, Ch. 993.)

6630. The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board. The appeals board and each party to the action or proceeding before the appeals board shall have the right to appear in the mandate proceeding. Upon the hearing, the court shall enter judgment either affirming or annulling the order or decision, or the court may remand the case for further proceedings before the appeals board.

(Amended by Stats. 1974, Ch. 1284.)

6631. The provisions of the Code of Civil Procedure relating to writs of mandate shall, so far as applicable, apply to proceedings in the courts under the provisions of this part. A copy of every pleading filed pursuant to the terms of this part shall be served on the appeals board and upon every party who entered an appearance in the action before the appeals board and whose interest therein is adverse to the party filing such pleading.

(Added by Stats. 1973, Ch. 993.)

6632. No court of this state, except the Supreme Court, the courts of appeal, and the superior court to the extent herein specified, has jurisdiction to review, reverse, correct, or annul any order or rule, or decision of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties.

(Amended by Stats. 1974, Ch. 1284.)

6633. The filing of a petition for, or the pendency of, a writ of mandate shall not of itself stay or suspend the operation of any order, rule or decision of the appeals board, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order or decision of the appeals board subject to review, upon the terms and conditions which it by order directs.

(Amended by Stats. 1974, Ch. 1284.)

Chapter 8. Enforcement of Civil Penalties

(Chapter 8 repealed and added by Stats. 1974, Ch. 1284.)

6650. (a) After the expiration of the period during which a penalty may be appealed, no appeal having been filed, the department may file with the clerk of the superior court in any county a certified copy of the citation and notice of civil penalty, the certification by the department that the penalty remains unpaid, and the division's proof of service on the employer of the items filed with the clerk of the court.

(b) After the exhaustion of the review procedures provided for in Chapter 7 (commencing with Section 6600), an appeal having been filed, the department may file with the clerk of the superior court in any county a certified copy of the citation and notice of civil penalty, a certified copy of the order, findings or decision of the appeals board, the certification of the department that the penalty remains unpaid, and proof of service on the employer at the employer's address as shown on the official address record by the appeals board.

(c) The clerk, immediately upon the filing of a notice of civil penalty by the department pursuant to subdivision (a) or (b), shall enter judgment for the state against the person assessed the civil penalty in the amount of the penalty, plus interest due for each day from the date of issuance of the notice of civil penalty that the penalty remains unpaid.

(d) The department shall serve the notice of entry of judgment provided by Section 664.5 of the Code of Civil Procedure on the employer.

(e) A judgment entered pursuant to this section shall bear the same rate of interest, have the same effect as other judgments, and be given the same preference allowed by law on other judgments rendered for claims for taxes pursuant to Section 7170 of the Government Code.

(f) No fees shall be charged by the clerk of any court for the performance of any official service required by this chapter.

(Amended by Stats. 2000, Ch. 135, Sec. 130. Effective January 1, 2001.)

6651. (a) Notwithstanding Section 340 of the Code of Civil Procedure, an action to collect any civil penalty, fee, or penalty fee under this division shall be commenced within three years from the date the penalty or fee became final.

(b) The amendments made to this section by the act adding this subdivision shall only apply to penalty assessments or fees for which the three-year period prescribed in this section for the commencement of an action to collect a civil penalty or fee has not expired on the effective date of the act adding this subdivision.

(Amended by Stats. 1993, Ch. 998, Sec. 2. Effective January 1, 1994.)

6652. The division shall provide the Contractors' State License Board with a certified copy of every notice of civil penalty deemed to be a final order pursuant to Section 6601 or after the exhaustion of all other review procedures pursuant to Chapter 7 (commencing with Section 6600) when both of the following have occurred:

(a) The employer served with the notice of civil penalty is, or is thought to be, a licensee licensed by the Contractors' State License Board.

(b) The employer referred to in subdivision (a) has failed to pay the civil penalty after a period of 60 days following that employer's receipt of the notice of civil penalty.

(c) When the employer has paid the civil penalty referenced in the certified copy of notice of civil penalty that was provided to the Contractors' State License Board, including all interest owed thereon, then the division shall provide to the employer who was the subject of the certified copy of notice a written confirmation or receipt stating that the employer has paid the amount owed that was the subject of the certified notice provided to the board.

(Added by Stats. 1991, Ch. 1210, Sec. 4.)

Chapter 9. Miscellaneous Safety Provisions

(Chapter 9 added by Stats. 1973, Ch. 993.)

6700. (a) Any employer who causes or allows the use of any flammable or combustible material for the installation acceptance pressure test of any gas houseline or piping shall be conclusively presumed to be maintaining an unsafe place of employment.

(b) Any employer who causes or allows gas pipelines to be tested with gas at pressures in excess of that permitted by applicable sections of the American Society of Mechanical Engineers Code for Pressure Piping shall be conclusively presumed to be maintaining an unsafe place of employment.

(Added by Stats. 1973, Ch. 993.)

6701. It shall be the duty of the standards board to determine by the maximum allowable standards of emissions of contaminants from portable and from mobile internal combustion engines used inside factories, manufacturing plants, warehouses,

buildings and other enclosed structures, which standards are compatible with the safety and health of employees.

(Added by Stats. 1973, Ch. 993.)

6702. All portable and all mobile internal combustion engines that are used inside factories, manufacturing plants, warehouses, buildings and other enclosed structures shall be equipped with a certified exhaust purifier device after the certification of the device by the State Air Resources Board.

The Division of Occupational Safety and Health shall be responsible for the enforcement of the provisions of this section.

(Amended by Stats. 1980, Ch. 676.)

6703. Sections 6701 and 6702 shall apply to all portable and all mobile internal combustion engines used inside factories, manufacturing plants, warehouses, buildings and other enclosed structures unless the operation of such an engine used inside a particular factory, plant, warehouse, building or enclosed structure does not result in harmful exposure to concentrations of dangerous gases or fumes in excess of maximum acceptable concentrations as determined by the standards board.

(Amended by Stats. 1974, Ch. 1284.)

6704. All crawler and wheel cranes with cable-controlled booms and with rated lifting capacity of more than 10 tons sold or operated in this state shall be equipped with boomstops that meet standards that shall be established therefor by the standards board.

(Added by Stats. 1973, Ch. 993.)

6705. No contract for public works involving an estimated expenditure in excess of twenty-five thousand dollars ($25,000), for the excavation of any trench or trenches five feet or more in depth, shall be awarded unless it contains a clause requiring submission by the contractor and acceptance by the awarding body or by a registered civil or structural engineer, employed by the awarding body, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

Nothing in this section shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders.

Nothing in this section shall be construed to impose tort liability on the awarding body or any of its employees.

The terms "public works" and "awarding body", as used in this section, shall have the same meaning as in Sections 1720 and 1722, respectively, of the Labor Code.

(Added by Stats. 1973, Ch. 993.)

6705.5. Regulations of the department requiring the shoring, bracing, or sloping of excavations, or which contain similar requirements for excavations, shall only apply to the excavation of swimming pools where a reasonable examination by a qualified person reveals recognizable conditions which would expose employees to injury from possible moving ground. If these conditions are found to exist with respect to a swimming pool excavation, employees shall not be permitted to enter the excavation until the condition is abated or otherwise no longer exists.

(Added by Stats. 1985, Ch. 815, Sec. 1.)

6706. For the purposes of subdivision (a) of Section 6500, only one permit shall be required for a project involving several trenches or excavations. The provisions of Section 6500 shall not apply to the construction of trenches or excavations for the purpose of performing emergency repair work to underground facilities, or the construction of swimming pools, or the construction of "graves" as defined in Section 7014 of the Health and Safety Code or to the construction or final use of excavations or trenches where the construction or final use does not require a person to descend into the excavations or trenches.

(Added by Stats. 1973, Ch. 993.)

6707. Whenever the state, a county, city and county, or city issues a call for bids for the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, such call shall specify that each bid submitted in response thereto shall contain, as a bid item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which shall conform to applicable safety orders. Nothing in this section shall be construed to impose tort liability on the body awarding the contract or any of its employees. This section shall not apply to contracts awarded pursuant to the provisions of Chapter 3 (commencing with Section 14250) of Part 5 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1973, Ch. 993.)

6708. Every contractor on a construction project, including but not limited to any public works, shall maintain adequate emergency first aid treatment for his employees. As used in this section, "adequate" shall be construed to mean sufficient to comply with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596).

(Added by Stats. 1973, Ch. 993.)

6710. (a) At every place of employment where explosives are used in the course of employment, there shall be a person licensed pursuant to the provisions of Chapter 3 (commencing with Section 7990) of Part 9 of Division 5, to supervise and visually direct the blasting operation.

(b) For the purposes of this section, "explosives" shall include, but not be limited to, class A and B explosives, blasting caps, detonating cord, and charges or projectiles used in the control of avalanches. For the purposes of this section, "explosives" shall not include small arms ammunition or class C explosives such as explosive powerpacks in the form of explosive cartridges or explosive-charged construction devices, explosive rivets, bolts, and charges for driving pins and studs, and cartridges for explosive-actuated power devices.

(c) This section shall not apply to persons, firms, or corporations licensed pursuant to Part 2 (commencing with Section 12500) of Division 11 of the Health and Safety Code.

(Amended by Stats. 1985, Ch. 958, Sec. 1.)

6711. (a) The division shall develop and administer an oral and written examination for persons using explosives, as defined in Section 6710, while engaged in snow avalanche blasting. Any person engaged in snow avalanche blasting shall pass this examination prior to being licensed by the division.

(b) The division shall select an advisory committee to assist the division in preparing the data and information for the written and oral qualifying examination. The advisory committee shall consist of not less than seven members, nor more than nine members, with at least one representative from explosives manufacturers, snow avalanche blasting consultants, the recreational snow ski industry, a public recreation area, the California Department of Transportation, and the division.

(Added by Stats. 1985, Ch. 958, Sec. 2.)

6712. (a) The standards board shall, no later than December 1, 1991, adopt an occupational safety and health standard for field sanitation. The standard shall comply with all of the following:

(1) The standard shall be at least as effective as the federal field sanitation standard contained in Section 1928.110 of Title 29 of the Code of Federal Regulations.

(2) The standard shall be at least as effective as California field sanitation requirements in effect as of July 1, 1990, pursuant to Article 4 (commencing with Section 113310) of Chapter 11 of Part 6 of Division 104 of the Health and Safety Code, Article 1 (commencing with Section 118375) of Chapter 1 of Part 15 of Division 104 of the Health and Safety Code, and Section 2441 of this code.

(3) The standard shall apply to all agricultural places of employment.

(4) The standard shall require that toilets are serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.

(b) Consistent with its mandatory investigation and reinspection duties under Sections 6309, 6313, and 6320, the division shall develop and implement a special emphasis program for enforcement of the standard for at least two years following its adoption. Not later than March 15, 1995, the division shall also develop a written plan to coordinate its enforcement program with other state and local agencies. The division shall be the lead enforcement agency. Other state and local agencies shall cooperate with the division in the development and implementation of the plan. The division shall report to the Legislature, not later than January 1, 1994, on its enforcement program. The plan shall provide for coordination between the division and local officials in counties where the field sanitation facilities required by the standard adopted pursuant to subdivision (a) are registered by the county health officer or other appropriate official of the county where the facilities are located. The division shall establish guidelines to assist counties that choose to register sanitation facilities pursuant to this section, for developing service charges, fees, or assessments to defray the costs of registering the facilities, taking into consideration the differences between small and large employers.

(c) (1) Past violations by a fixed-site or nonfixed-site employer, occurring anywhere in the state within the previous five years, of one or more field sanitation regulations established pursuant to this section, or of Section 1928.110 of Title 29 of the Code of Federal Regulations, shall be considered for purposes of establishing whether a current violation is a repeat violation under Section 6429.

(2) Past violations by a fixed-site or nonfixed-site employer, occurring anywhere in the state within the previous five years, of one or more field sanitation regulations established pursuant to this section, Article 4 (commencing with Section 113310) of Chapter 11 of Part 6 of Division 104 of the Health and Safety Code, Article 1 (commencing with Section 118375) of Part 15 of Division 104 of the Health and Safety Code, or Section 2441 of this code, or of Section 1928.110 of Title 29 of the Code of Federal Regulations, shall constitute evidence of willfulness for purposes of Section 6429.

(d) (1) Notwithstanding Sections 6317 and 6434, any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive, except that in no case shall the penalty be less than seven hundred fifty dollars ($750) for each violation.

(2) Abatement periods fixed by the division pursuant to Section 6317 for violations shall be limited to one working day. However, the division may, pursuant to Section 6319.5, modify the period in cases where a good faith effort to comply with the abatement requirement is shown. The filing of an appeal with the appeals board pursuant to Sections 6319 and 6600 shall not stay the abatement period.

(3) An employer cited pursuant to paragraph (1) of this subdivision shall be required to annually complete a field sanitation compliance form which shall list the estimated peak number of employees, the toilets, washing, and drinking water facilities to be provided by the employer, any rental and maintenance agreements, and any other information considered relevant by the division for a period of five years following the citation. The employer shall be required to annually submit the completed form, subscribed under penalty of perjury, to the division, or to an agency designated by the division.

(e) The division shall notify the State Department of Health Services and the appropriate local health officers whenever a violation of the standard adopted pursuant to this section may result in the adulteration of food with harmful bacteria or other deleterious substances within the meaning of Article 5 (commencing with Section 110545) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(f) Pending final adoption and approval of the standard required by subdivision (a), the division may enforce the field sanitation standards prescribed by Section 1928.110 of Title 29 of the Code of Federal Regulations, except subdivision (a) of Section 1928.110, in the same manner as other standards contained in this division.

(Amended by Stats. 1996, Ch. 1023, Sec. 383. Effective September 29, 1996.)

6716. For the purposes of this division, "lead-related construction work" means any of the following:

(a) Any construction, alteration, painting, demolition, salvage, renovation, repair, or maintenance of any building or structure, including preparation and cleanup, that, by using or disturbing lead-containing material or soil, may result in significant exposure of employees to lead as determined by the standard adopted pursuant to Section 6717.

(b) The transportation, disposal, storage, or containment of materials containing lead on site or at a location at which construction activities are performed. "Lead-related construction work" does not include any activity related to the manufacture or mining of lead or the installation or repair of automotive materials containing lead.

(Added by Stats. 1993, Ch. 1122, Sec. 4. Effective January 1, 1994.)

6717. (a) On or before February 1, 1994, the division shall propose to the standards board for its review and adoption, a standard that protects the health and safety of employees who engage in lead-related construction work and meets all requirements imposed by the federal Occupational Safety and Health Administration. The standards board shall adopt the standard on or before December 31, 1994. The standard shall at least prescribe protective measures appropriate to the work activity and the lead content of materials to be disturbed by the activity, and shall include requirements and specifications pertaining to the following:

(1) Sampling and analysis of surface coatings and other materials that may contain significant amounts of lead.

(2) Concentrations and amounts of lead in surface coatings and other materials that may constitute a health hazard to employees engaged in lead-related construction work.

(3) Engineering controls, work practices, and personal protective equipment, including respiratory protection, fit-testing requirements, and protective clothing and equipment.

(4) Washing and showering facilities.

(5) Medical surveillance and medical removal protection.

(6) Establishment of regulated areas and appropriate posting and warning requirements.

(7) Recordkeeping.

(8) Training of employees engaged in lead-related construction work and their supervisors, that shall consist of current certification as required by regulations adopted under subdivision (c) of Section 105250 of the Health and Safety Code and include training with respect to at least the following:

(A) Health effects of lead exposure, including symptoms of overexposure.

(B) The construction activities, methods, processes, and materials that can result in lead exposure.

(C) The requirements of the lead standard promulgated pursuant to this section.

(D) Appropriate engineering controls, work practices, and personal protection for lead-related work.

(E) The necessity for fit-testing for respirator use and how fit-testing is conducted.

(Amended by Stats. 1996, Ch. 1023, Sec. 384. Effective September 29, 1996.)

6718. Notwithstanding any other provision of law, any test procedures adopted by a state agency to determine compliance with vapor emission standards, by vapor recovery systems of cargo tanks on tank vehicles used to transport gasoline, shall not require any person to climb upon the cargo tank during loading operations.

(Added by Stats. 1997, Ch. 84, Sec. 1. Effective January 1, 1998.)

6719. The Legislature reaffirms its concern over the prevalence of repetitive motion injuries in the workplace and reaffirms the Occupational Safety and Health Standards Board's continuing duty to carry out Section 6357.

(Added by Stats. 1999, Ch. 615, Sec. 12. Effective January 1, 2000.)

6720. By January 1, 2019, the division shall propose to the standards board for the board's review and adoption a standard that minimizes heat-related illness and injury among workers working in indoor places of employment. The standard shall be based on environmental temperatures, work activity levels, and other factors. In developing the standard, the division shall take into consideration heat stress and heat strain guidelines in the 2016 Threshold Limit Values and Biological Exposure Indices developed by the American Conference of Governmental Industrial Hygienists. This section does not prohibit the division from proposing, or the standards board from adopting, a standard that limits the application of high heat provisions to certain industry sectors.

(Added by Stats. 2016, Ch. 839, Sec. 1. Effective January 1, 2017.)

Part 2. Safeguards On Railroads

(Part 2 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Jurisdiction

(Heading of Chapter 1 amended by Stats. 1945, Ch. 1431.)

6800. The division has jurisdiction over:

(a) The safety and health of railroad employees employed in offices and in shops devoted to the construction, maintenance or repair of railroad equipment, and all other railroad employees with respect to occupational health, including, but not limited to, air contaminants, noise, sanitation and availability of drinking water.

(b) The occupational safety and health of employees of rail rapid transit systems, electric interurban railroads, or street railroads.

(c) The safety of employees of all other public utilities as defined in the Public Utilities Act.

(Amended by Stats. 1982, Ch. 338, Sec. 2.)

6801. The jurisdiction vested in the division shall in no instance, except those affecting exclusively the safety of employees, impair, diminish, or in any way affect the jurisdiction of the Public Utilities Commission over the construction, reconstruction, replacement, maintenance, or operation of the properties of public utilities or over any matter affecting the relationship between public utilities and their customers or the general public.

(Amended by Stats. 1953, Ch. 699.)

6802. If the division makes or issues any order, decision, ruling or direction under this chapter which, in the judgment of the Public Utilities Commission, unduly and prejudicially interferes with the construction or operation of any public utility affected thereby, or with the public, or with a consumer or other patron of a public utility affected thereby, the Public Utilities Commission, of its own motion, or upon application of any utility or person so affected, may suspend, modify, alter, or annul such order, decision, ruling, or direction of the commission. The action of the Public Utilities Commission shall supersede and control the order, decision, ruling, or direction of the division previously made.

(Amended by Stats. 1953, Ch. 699.)

Chapter 2. Operation Personnel

(Chapter 2 enacted by Stats. 1937, Ch. 90.)

6900. Notwithstanding Section 6800, the Public Utilities Commission shall enforce the provisions of this chapter.

(Added by Stats. 1959, Ch. 2187.)

6900.1. This Act shall be known and cited as the Railroad Anti-Featherbedding Law of 1964.

(Added November 3, 1964, by initiative Proposition 17. Note: Prop. 17 also includes Section 6900.5.)

6900.5. It is the policy of the people of the State of California that featherbedding practices in the railroad industry should be eliminated and that national settlement of labor controversies relating to the manning of trains should be made effective in California. Accordingly the award of the Federal Arbitration Board No. 282 appointed by President John F. Kennedy pursuant to Congressional Public Law 88-108 of August 28, 1963, providing for the elimination of excess firemen and brakemen on diesel powered freight trains, or awards made pursuant thereto, shall be made effective in this State. Said award was the culmination of the proceedings originating with the Presidential Railroad Commission which was appointed by President Dwight D. Eisenhower at the request of both railroad labor and management and reported to President Kennedy on February 26, 1962.

Nothing contained in the laws of this State or in any order of any regulatory agency of this State shall prevent a common carrier by railroad from manning its trains in accordance with said award, in accordance with any federal legislation or awards

pursuant thereto, or in accordance with any agreement between a railroad company and its employees or their representatives.

(Added November 3, 1964, by initiative Proposition 17. Note: Prop. 17 (the Railroad Anti-Featherbedding Law of 1964) also includes Section 6900.1.)

6901. (a) No common carrier operating more than four trains each way per day of 24 hours on any main track or branch line of railroad within this state, or on any part of a main track or branch line, shall run or permit to be run, on any part of a main track or branch line, any passenger, mail, or express train on which there is not employed at least one conductor, one brakeman, and the following:

(1) One engineer and one fireman for each diesel locomotive.

(2) One electric motorman for each train propelled or run by electricity.

(3) One motor or power control man for each train propelled by motive power other than diesel or electricity.

(4) Two brakemen, where four or more cars, exclusive of railroad officers' private cars, are hauled.

(5) One baggageman, except on a train upon which baggage is not hauled, and on gasoline motorcars.

(b) This section does not apply to any diesel locomotive weighing 45 tons or less.

(c) Paragraph (4) of subdivision (a) does not apply where its application would conflict with the terms of a collective bargaining agreement.

(d) Subdivision (a) does not apply to the San Diego Metropolitan Transit Development Board or the North San Diego County Transit Development Board.

(e) With respect to commuter train service provided by the San Diego Metropolitan Transit Development Board or the North San Diego County Transit Development Board, there shall be at least one qualified crewmember inside a train car set during revenue service. For the purpose of this subdivision, "revenue service" means service during which passengers are carried or are scheduled to be carried.

(Amended by Stats. 1993, Ch. 681, Sec. 1. Effective January 1, 1994.)

6902. (a) For purposes of this section, "revenue service" means passenger train service during which passengers are carried or are scheduled to be carried.

(b) For purposes of this section, "local agency" means any city, county, special district, or other public entity in the state, including a charter city or a charter county.

(c) Except as otherwise provided by subdivision (e) of Section 6901, during revenue service provided by a local agency, or by any entity under contract with a local agency, there shall be in addition to the train operator at least one qualified employee inside a train car set of six or fewer coaches and at least two qualified employees inside a train car set of seven or more coaches.

(d) (1) A request for proposal or request for bid to provide revenue service issued by a local agency shall require compliance with subdivision (c).

(2) A contract to provide revenue service awarded by a local agency shall require compliance with subdivision (c).

(3) If a court of competent jurisdiction determines that an entity receiving a request for proposal or request for bid from a local agency for revenue service is exempt from the requirements of this section, all other entities that received the same request for proposal or request for bid shall also be exempt from the requirements of this section in responding to that request for proposal or request for bid.

(e) This section does not apply to heavy rail transit systems that are owned or operated by a public entity, or to light rail public transit systems.

(Added by Stats. 1994, Ch. 976, Sec. 1. Effective January 1, 1995.)

6903. (a) Effective February 1, 2016, a train or light engine used in connection with the movement of freight shall not be operated unless it has a crew consisting of at least two individuals.

(b) For purposes of this section, the term "train or light engine used in connection with the movement of freight" shall not include hostler service or utility employees.

(c) The Public Utilities Commission may assess civil penalties against any person who willfully violates this section, according to the following schedule:

(1) A civil penalty of two hundred fifty dollars ($250) to one thousand dollars ($1,000) for the first violation.

(2) A civil penalty of one thousand dollars ($1,000) to five thousand dollars ($5,000) for the second violation within a three-year period.

(3) A civil penalty of five thousand dollars ($5,000) to ten thousand dollars ($10,000) for the third violation and each subsequent violation within a three-year period.

(d) The remedies available to the commission pursuant to this section are nonexclusive and do not limit the remedies available under all other laws or pursuant to contract.

(Added by Stats. 2015, Ch. 283, Sec. 1. Effective January 1, 2016.)

6904. Nothing in this chapter shall apply to a locomotive or locomotives without cars, except that each locomotive shall have one engineer and one fireman when being moved in train under steam, unless the engine is disabled.

(Enacted by Stats. 1937, Ch. 90.)

6905. This chapter shall not apply to any relief or wrecking train in any case where a number of employees sufficient to comply with this chapter is not available for service on such relief or wrecking train.

(Enacted by Stats. 1937, Ch. 90.)

6906. No common carrier shall employ any person as:

(a) A locomotive engineer who has not had at least three years' actual service as a locomotive fireman or one year's actual service as a locomotive engineer.

(b) A conductor who has not had at least two years' actual service as a railroad brakeman in road service on steam or electric railroad other than street railway, or one year's actual service as a railroad conductor in road service.

(c) A brakeman who has not passed the regular examination required by transcontinental railroads.

(Amended by Stats. 1957, Ch. 180.)

6907. Nothing in this chapter shall apply to the running or operating of locomotives or motor power cars to and from trains at terminals by hostlers or of steam locomotives or motive power cars to and from engine houses or to the doing of work on steam locomotives or motive power cars at shops or engine-houses.

(Enacted by Stats. 1937, Ch. 90.)

6908. Any violation of this chapter is a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

6909. Nothing in this chapter shall apply to the operation of any train by a common carrier during times of strikes or walkouts, participated in by any of the employees mentioned in this chapter.

(Enacted by Stats. 1937, Ch. 90.)

6910. Nothing in this chapter shall apply to gasoline motor cars operated exclusively on branch lines or to trains of less than three cars propelled by electricity.

(Enacted by Stats. 1937, Ch. 90.)

Chapter 3. Safety Devices

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

6950. On any railroad train where the engine is accompanied by a tender of the Vanderbilt or similar type of construction and where the clearance between the overhang of the roof of the cab of the engine and the top of the tender accompanying the engine is less than twenty-eight inches, an opening not less than twenty-four inches square shall be cut out in the overhang of the roof of the cab, for the purpose of enabling an engineman with safety to go from the cab of the engine to the top of the tender.

(Enacted by Stats. 1937, Ch. 90.)

6951. Any railroad company operating a line in whole or in part within this state, or any receiver of any railroad, that fails to comply with any provision of section 6950 is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) for each offense. Each day that such failure continues is a separate offense.

(Amended by Stats. 1983, Ch. 1092, Sec. 220. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

6952. Every railroad company operating engines within any part of this state shall provide each engine cab with a substantial and safe handrail along the top on each side of the cab extending from the front to the rear of the cab. Every engine cab other than one having front windows of not less than 14 inches in width and 42 inches in height shall be provided and equipped with a substantial and safe footboard, of not less than one and one-half inches, projecting outward from each side of the cab level with the floor and extending from the front to the rear of the cab.

Any railroad company, or receiver thereof, which fails to comply with any provisions of this section is guilty of a misdemeanor, punishable by a fine of two hundred dollars ($200) for each offense.

The provisions of this section shall not apply to any railroad company which issued in writing before July 2, 1921, and maintains in force, an order forbidding the engine or train crew to go from the engine cab to that portion of the engine in front of the cab while the cab is in motion.

(Amended by Stats. 1983, Ch. 1092, Sec. 221. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

6953. Any electric car operated in interurban service and any electric locomotive shall be equipped exclusively with laminated safety glass in the compartment of the motorman or engineer, or if there is no compartment, the window in front of the motorman shall be so equipped, if the following conditions concur:

(a) The car or locomotive is built after the effective date of this section.

(b) The car or locomotive is operated by an overhead wire.

(c) The car or locomotive can exceed a speed of 45 miles per hour.

(Added by Stats. 1941, Ch. 292.)

6954. On and after the first day of September, 1946, it shall be unlawful to operate any electric car in interurban service or any electric locomotive which is not so equipped with laminated safety glass.

(Added by Stats. 1941, Ch. 292.)

6955. Laminated safety glass is glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons, by objects from external sources, or by glass when the glass is cracked or broken.

(Added by Stats. 1941, Ch. 292.)

6956. Any common carrier violating Sections 6953 or 6954 is guilty of a misdemeanor for each violation, punishable by a fine of not less than two hundred dollars ($200) for each offense. Each day that any electric car is operated in interurban service or that any electric locomotive is operated, is a separate offense.

(Amended by Stats. 1983, Ch. 1092, Sec. 222. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

Chapter 4. Trains

(Chapter 4 added by Stats. 1939, Ch. 1060.)

7000. As used in this section "caboose" means a caboose forming a part of a train and occupied by employees or caretakers, or both.

If conditions warrant it for the safety of the occupants of a caboose the conductor, in using a pusher engine, may place it ahead of the caboose.

This section applies only to main line movements of over five miles.

This section shall not prevent the use of an electric locomotive at the rear of any train.

This section shall not apply in any case of casualty, unavoidable accident, or act of God; nor under circumstances which are the result of a cause not known to, and which could not have been foreseen by, the railroad corporation, or its officer or agent in charge of a train. This section shall not apply to the operation of wrecking, or relief trains.

(Added by Stats. 1939, Ch. 1060.)

Part 3. Safety On Buildings

(Part 3 enacted by Stats. 1937, Ch. 90.)

Chapter 1. Buildings Under Construction or Repair

(Chapter 1 enacted by Stats. 1937, Ch. 90.)

Article 1. Floors and Walls

(Article 1 repealed and added by Stats. 1970, Ch. 1498.)

7100. As used in this article, "building" means any multifloor building, other than structural steel framed building, more than two stories high in the course of construction.

(Repealed and added by Stats. 1970, Ch. 1498.)

7101. Every building shall have the joists, beams, or girders of floors below the floor or level where any work is being done, or about to be done, covered with flooring laid close together, or with other suitable material to protect workmen engaged in such building from falling through joists or girders, and from falling substances, whereby life or safety is endangered.

(Repealed and added by Stats. 1970, Ch. 1498.)

7102. Every building which is of reinforced concrete construction, with reinforced concrete floors, shall have the floor filled in, either with forms or concrete, on each floor before the commencement of work upon the walls of the second floor above or the commencement of work upon the floor of the next floor above.

(Repealed and added by Stats. 1970, Ch. 1498.)

7103. Every building having wooden floors other than a steel frame building shall have the underflooring, if double flooring is to be used, laid on each floor within the time prescribed above for reinforced concrete floors. Where single wooden floors are

to be used, each floor shall be planked over within the time prescribed above for reinforced concrete floors.

(Repealed and added by Stats. 1970, Ch. 1498.)

7104. If a span of a floor on a building exceeds 13 feet, an intermediate beam shall be used to support the temporary flooring, but spans not to exceed 16 feet may be covered by three-inch planks without an intermediate beam. The intermediate beam shall be of a sufficient strength to sustain a live load of 50 pounds per square foot of the area supported.

(Repealed and added by Stats. 1970, Ch. 1498.)

7105. If building operations are suspended and the temporary flooring required by this article is removed, the building shall be replanked upon the resumption of work so that every man at work has a covered floor not more than two stories below.

(Repealed and added by Stats. 1970, Ch. 1498.)

7106. Where a building is being constructed in sections each section constitutes a building for the purpose of this article.

(Repealed and added by Stats. 1970, Ch. 1498.)

7107. Planked floors on buildings shall be tightly laid together of proper thickness, grade and span to carry the working load; such working load to be assumed as at least 25 pounds per square foot.

(Repealed and added by Stats. 1970, Ch. 1498.)

7108. Safety belts and nets shall be required in accordance with Article 24 (commencing with Section 1669) of subchapter 4 of Chapter 4 of Part 1 of Title 8 of the California Administrative Code, Construction Safety Orders of the Division of Occupational Safety and Health.

(Amended by Stats. 1980, Ch. 676.)

7109. No person shall proceed with any work assigned to or undertaken by him, or require or permit any other person to proceed with work assigned to or undertaken by either, unless the planking or nets required by this article are in place. Violation of this section is a misdemeanor.

(Repealed and added by Stats. 1970, Ch. 1498.)

7110. The Division of Occupational Safety and Health shall enforce this article.

(Amended by Stats. 1980, Ch. 676.)

Article 2. Scaffolding

(Article 2 enacted by Stats. 1937, Ch. 90.)

7150. As used in this article, "scaffolding" includes scaffolding and staging.

(Enacted by Stats. 1937, Ch. 90.)

7151. If the working platform of any scaffolding swung or suspended from an overhead support is more than 10 feet above the ground, floor or area to which an employee on the scaffolding might fall, it shall have a safety rail of wood or other equally rigid material of adequate strength. The rail shall comply with the applicable orders of the Division of Occupational Safety and Health.

Suspended scaffolding shall be fastened so as to prevent the scaffolding from swaying from the building, or structure, or other object being worked on from the scaffolding. All parts of the scaffolding shall be of sufficient strength to support, bear, or withstand with safety any weight of persons, tools, appliances, or materials which might reasonably be placed on it or which are to be supported by it.

(Amended by Stats. 1980, Ch. 676.)

7152. In addition to the duties imposed by any law regulating or relating to scaffolding, an employer who uses or permits the use of scaffolding described in Section 7151 in connection with construction, alteration, repairing, painting, cleaning or doing of any work upon any building or structure, shall:

(a) Furnish safety lines to tie all hooks and hangers back on the roof of such building or structure.

(b) Provide safety lines hanging from the roof, securely tied thereto, for all swinging scaffolds which rely upon stirrups of the single point suspension type to support the working platform. One such line shall be provided for each workman with a minimum of one line between each pair of hangers or falls.

The standards board may adopt occupational safety and health standards different from the requirements of this section or grant variances from these requirements if the standards or variances provide equivalent or superior safety for employees.

(Amended by Stats. 1981, Ch. 905, Sec. 1.)

7153. Platforms or floors of such scaffolding shall be not less than 14 inches in width and shall be free from knots or fractures impairing their strength.

(Amended by Stats. 1947, Ch. 700.)

7154.1. The use of lean-to scaffolds, sometimes known as jack scaffolds, as support for scaffolds is hereby prohibited.

(Added by Stats. 1943, Ch. 257.)

7155. Violation of any provision of section 7151 to 7154 inclusive is a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

7156. Any person employing or directing another to do or perform any labor in the construction, alteration, repairing, painting, or cleaning of any house, building, or structure within this state is guilty of a misdemeanor who does any of the following:

(a) Knowingly or negligently furnishes or erects, or causes to be furnished or erected for the performance of that labor, unsafe or improper scaffolding, slings, hammers, blocks, pulleys, stays, braces, ladders, irons, ropes, or other mechanical contrivances.

(b) Hinders or obstructs any officer or inspector of the Division of Occupational Safety and Health attempting to inspect such equipment under the provisions of this article or any law or safety order of this state.

(c) Destroys or defaces, or removes any notice posted thereon by any division officer or inspector, or permits the use thereof, after the equipment has been declared unsafe by the officer or inspector.

(Amended by Stats. 1980, Ch. 676.)

7157. The division may make and enforce safety orders in the manner prescribed by law, to supplement and carry into effect the purposes and provisions of this article.

(Amended by Stats. 1945, Ch. 1431.)

7158. The division shall enforce the provisions of this article.

(Amended by Stats. 1945, Ch. 1431.)

Article 3. Construction Elevators

(Article 3 enacted by Stats. 1937, Ch. 90.)

7200. As used in this article:

(a) "Construction elevator" includes any means used to hoist persons or material of any kind on a building under course of construction, when operated by any power other than muscular power.

(b) "Building" includes structures of all kinds during the course of construction, regardless of the purposes for which they are intended and whether such construction be below or above the level of the ground.

(Enacted by Stats. 1937, Ch. 90.)

7201. Every construction elevator used in buildings shall have a system of signals for the purpose of signaling the person

operating or controlling the machinery which operates or controls the construction elevator.

(Enacted by Stats. 1937, Ch. 90.)

7202. The person in charge of a building shall appoint one or more persons to give such signals. Such person shall be selected from those most familiar with the work for which the construction elevator is being used. The signaling devices provided shall be protected against unauthorized or accidental operation.

(Enacted by Stats. 1937, Ch. 90.)

7203. The board shall make, and may from time to time amend, general safety orders in the manner prescribed by law. Such orders shall specify and fix the nature and methods of signals and signaling devices and uniform signals to be used in this State under this article.

(Amended by Stats. 1945, Ch. 1431.)

7204. The division shall inspect all construction elevators. If any part of the construction or system of signals used on a construction elevator is defective or endangers the lives of the persons working in the immediate vicinity of the construction elevator, the division shall direct the person in charge thereof to remedy such defect. Such construction elevator shall not be used again until the order of the division is complied with.

(Amended by Stats. 1945, Ch. 1431.)

7205. Any person, or the agent or officer thereof, who violates any provision of this article is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000), or imprisonment in the county jail for not less than 30 days and not more than six months, or both.

(Amended by Stats. 1983, Ch. 1092, Sec. 223. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

Article 4. Structural Steel Framed Buildings

(Article 4 added by Stats. 1970, Ch. 1498.)

7250. As used in this article "building" means any multifloor structural steel framed building more than two stories high in the course of construction.

(Added by Stats. 1970, Ch. 1498.)

7251. As defined above, these provisions shall apply to buildings erected in tiers or stories and shall not apply to steel framed buildings having large open spans or areas such as, mill buildings, gymnasiums, auditoriums, hangars, arenas, or stadiums.

(Added by Stats. 1970, Ch. 1498.)

7252. The derrick or working floor of every building shall be solidly decked over its entire surface except for access openings.

(Added by Stats. 1970, Ch. 1498.)

7253. There shall be a tight and substantial temporary floor within two floors below and directly under that portion of each tier of beams on which erection, riveting, bolting, welding or painting is being done. For operations of short duration of exposure to falling, safety belts shall be required as set forth in Section 7265.

(Added by Stats. 1970, Ch. 1498.)

7254. Temporary floors shall be wood planking of proper thickness, grade and span to carry the working load, but shall not be less than two inches thick, full size undressed.

(Added by Stats. 1970, Ch. 1498.)

7255. Provision shall be made to secure temporary flooring against displacement by strong winds or other forces.

(Added by Stats. 1970, Ch. 1498.)

7256. Planks shall extend a minimum of 12 inches beyond centerline of their supports at each end.

(Added by Stats. 1970, Ch. 1498.)

7257. Wire mesh or plywood (exterior grade) shall be used to cover openings adjacent to columns where planks do not fit tightly.

(Added by Stats. 1970, Ch. 1498.)

7258. Metal decking where used in lieu of wood planking shall be of equivalent strength and shall be laid tightly and secured to prevent movement.

(Added by Stats. 1970, Ch. 1498.)

7259. Floor planks that are temporarily removed for any reason whatsoever shall be replaced as soon as work requiring their removal is completed or the open area shall be properly guarded.

(Added by Stats. 1970, Ch. 1498.)

7260. Prior to removal of temporary floor plank, employees shall be instructed by assigned supervision the steps to be taken to perform the work safely and in proper sequence.

(Added by Stats. 1970, Ch. 1498.)

7261. When gathering and stacking temporary floor plank on a lower floor, in preparation for transferring such plank for use on an upper working floor, the steel erector's personnel shall remove such plank successively, working toward the last panel of such floor, so that the work is always being done from the planked floor.

(Added by Stats. 1970, Ch. 1498.)

7262. When gathering and stacking temporary floor planks from the last panel, the steel erector's personnel assigned to such work shall be protected by safety belts with life lines attached to a catenary line or other substantial anchorage.

(Added by Stats. 1970, Ch. 1498.)

7263. The sequence of erection, bolting, temporary guying, riveting and welding shall be such as to maintain the stability of the structural frame at all times during construction. This applies to the dead weight of the structure, plus weight and working reactions of all construction equipment placed thereon plus any external forces that may be applied.

(Added by Stats. 1970, Ch. 1498.)

7264. Where a building is being constructed in sections, each section constitutes a building as defined in Section 7250.

(Added by Stats. 1970, Ch. 1498.)

7265. Safety belts and nets shall be required in accordance with Article 24 (commencing with Section 1669) of subchapter 4 of Chapter 4 of Part 1 of Title 8 of the California Administrative Code, Construction Safety Orders of the Division of Occupational Safety and Health.

(Amended by Stats. 1980, Ch. 676.)

7266. No person shall proceed with any work assigned to or undertaken by him, or require or permit any other person to proceed with work assigned to or undertaken by either, unless the planking or nets required by this article are in place. Violation of this section is a misdemeanor.

(Added by Stats. 1970, Ch. 1498.)

7267. The Division of Occupational Safety and Health shall enforce this article.

(Amended by Stats. 1980, Ch. 676.)

Chapter 2. Elevators, Escalators, Platform and Stairway Chair Lifts, Dumbwaiters, Moving Walks, Automated People Movers, and Other Conveyances

(Heading of Chapter 2 amended by Stats. 2002, Ch. 1149, Sec. 1.)

7300. The Legislature finds and declares all of the following:

(a) It is the purpose of this chapter to promote public safety awareness and to assure, to the extent feasible, the safety of the public and of workers with respect to conveyances covered by this chapter.

(b) The use of unsafe or defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Therefore, this chapter also establishes minimum standards for persons operating or maintaining conveyances covered by this chapter. These standards include familiarity with the operation and safety functions of the components and equipment, and documented training or experience or both, which shall include, but not be limited to, recognizing the safety hazards and performing the procedures to which they are assigned in conformance with all legal requirements.

(c) This chapter is not intended to prevent the division from implementing regulations, nor to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by the law, provided that there is technical documentation to demonstrate that the equivalency of the system, method, or device, is at least as effective as that prescribed in ASME A17.1, ASME A17.3, ASME A18.1, or ASCE 21.

(Repealed and added by Stats. 2002, Ch. 1149, Sec. 3. Effective January 1, 2003.)

7300.1. As used in this chapter:

(a) "ASCE 21" means the Automated People Mover Standards, as adopted by the American Society of Civil Engineers.

(b) "ASME A17.1" means the Safety Code for Elevators and Escalators, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(c) "ASME A17.3" means the Safety Code for Existing Elevators and Escalators, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(d) "ASME A18.1" means the Safety Standard for Platform Lifts and Stairway Chairlifts, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(e) "Automated people mover" has the same meaning as defined in ASCE 21.

(f) "Board" or "standards board" means the Occupational Safety and Health Standards Board.

(g) "Certified qualified conveyance company" means any person, firm, or corporation that (1) possesses a valid contractor's license if required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and (2) is certified as a qualified conveyance company by the division in accordance with this chapter.

(h) "Certified competent conveyance mechanic" means any person who has been determined by the division to have the qualifications and ability of a competent journey-level conveyance mechanic and is so certified by the division in accordance with this chapter.

(i) "Conveyance" means any elevator, dumbwaiter, escalator, moving platform lift, stairway chairlift, material lift or dumbwaiter with automatic transfer device, automated people mover, or other equipment subject to this chapter.

(j) "Division" means the Division of Occupational Safety and Health.

(k) "Dormant elevator, dumbwaiter, or escalator" means an installation placed out of service as specified in ASME A17.1 and ASME A18.1.

(l) "Elevator" means an installation defined as an "elevator" in ASME A17.1.

(m) "Conveyance inspector" means any conveyance safety inspector of the division or other conveyance inspector determined by the division to be qualified pursuant to this chapter.

(n) "Escalator" means an installation defined as an "escalator" in ASME A17.1.

(o) "Existing installation" means an installation defined as an "installation, existing" in ASME A17.1.

(p) "Full maintenance service contract" means an agreement by a certified competent conveyance company and the person owning or having the custody, management, or control of the operation of the conveyance, if the agreement provides that the certified competent conveyance company is responsible for effecting repairs necessary to the safe operation of the equipment and will provide services as frequently as is necessary, but no less often than monthly.

(q) "Material alteration" means an alteration as defined in ASME A17.1 or A18.1.

(r) "Moving walk" or "moving sidewalk" means an installation defined as a "moving walk" in ASME A17.1.

(s) "Permit" means a document issued by the division that indicates that the conveyance has had the required safety inspection and tests and fees have been paid as set forth in this chapter.

(t) "Temporary permit" means a document issued by the division which permits the use of a noncompliant conveyance by the general public for a limited time while minor repairs are being completed or until permit fees are paid.

(u) "Repair" has the same meaning as defined in ASME A17.1 or A18.1. A "repair" does not require a permit.

(v) "Temporarily dormant elevator, dumbwaiter, or escalator" means a conveyance, the power supply of which has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the "off" position. In the case of an elevator or dumbwaiter, the car shall be parked and the hoistway doors shall be in the closed and latched position. A wire seal shall be installed on the mainline disconnect switch by a conveyance inspector of the division. The wire seal and padlock shall not be removed for any purpose without permission from a conveyance inspector of the division. A temporarily dormant elevator, dumbwaiter, or escalator shall not be used again until it has been put in safe running order and is in condition for use. Annual inspections by a conveyance inspector shall continue for the duration of the temporarily dormant status. Temporarily dormant status may be renewed annually, but shall not exceed five years. After each inspection, the conveyance inspector shall file a report with the chief of the division describing the current condition of the conveyance.

(w) The meanings of building transportation terms not otherwise defined in this section shall be as defined in the latest editions of ASME A17.1 and ASME A18.1.

(Amended by Stats. 2004, Ch. 503, Sec. 1. Effective January 1, 2005.)

7300.2. Except as provided in Section 7300.3, this chapter covers the design, erection, construction, installation, material alteration, inspection, testing, maintenance, repair, service, and operation of the following conveyances and their associated parts and hoistways:

(a) Hoisting and lowering mechanisms equipped with a car or platform which move between two or more landings. This equipment includes, but is not limited to, the following:

(1) Elevators.

(2) Platform lifts and stairway chair lifts.

(b) Power-driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, the following:

(1) Escalators.

(2) Moving walks.

(c) Hoisting and lowering mechanisms equipped with a car which serve two or more landings and are restricted to the carrying of material by limited size or limited access to the car. This equipment includes, but is not limited to, the following:

(1) Dumbwaiters.

(2) Material lifts and dumbwaiters with automatic transfer devices.

(d) Automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes, but is not limited to, automated people movers.

(Added by Stats. 2002, Ch. 1149, Sec. 5. Effective January 1, 2003.)

7300.3. Equipment not covered by this chapter includes the following:

(a) Material hoists within the scope of standard A10.5 as adopted by the American National Standards Institute.

(b) Mobile scaffolds, towers, and platforms within the scope of standard A92 as adopted by the American National Standards Institute.

(c) Powered platforms and equipment for exterior and interior maintenance within the scope of standard 120.1 as adopted by the American National Standards Institute.

(d) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of standard B30 as adopted by the American Society of Mechanical Engineers.

(e) Industrial trucks within the scope of standard B56 as adopted by the American Society of Mechanical Engineers.

(f) Portable equipment, except for portable escalators that are covered by standard A17.1 as adopted by the American National Standards Institute.

(g) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story.

(h) Equipment for feeding or positioning materials, including that equipment used with machine tools or printing presses.

(i) Skip or furnace hoists.

(j) Wharf ramps.

(k) Railroad car lifts or dumpers.

(l) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing a conveyance by a contractor licensed in this state.

(Amended by Stats. 2004, Ch. 503, Sec. 2. Effective January 1, 2005.)

7300.4. This chapter does not apply to work that is not related to standards for conveyances that are (a) incorporated in codes promulgated by the American National Standards Institute or the American Society of Mechanical Engineers or (b) included in regulations of the division, in effect immediately prior to January 1, 2003, prescribing conveyance safety orders. Work exempted pursuant to this section includes, but is not limited to, routine nonmechanical maintenance, such as cleaning panels and changing light fixtures.

(Amended by Stats. 2004, Ch. 503, Sec. 3. Effective January 1, 2005.)

7301. No conveyance shall be operated in this state unless a permit for its operation is issued by or in behalf of the division, and unless the permit remains in effect and is kept posted conspicuously on the conveyance. Operation of a conveyance without a permit or failure to post the permit conspicuously shall constitute cause for the division to prohibit use of the conveyance, unless it can be shown that a request for issuance or renewal of a permit has been made and the request has not been acted upon by the division.

(Amended by Stats. 2002, Ch. 1149, Sec. 8. Effective January 1, 2003.)

7301.1. (a) On and after June 30, 2003, no conveyance may be erected, constructed, installed, or materially altered, as defined by regulation of the division, unless a permit has been obtained from the division before the work is commenced. A copy of the permit shall be kept at the construction site at all times while the work is in progress and shall be made available for inspection upon request. This section shall not apply to platform lifts and stairway chairlifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for a permit under this section, which shall include the following:

(1) At a minimum, the applicant for a permit under this section shall meet all of the following requirements:

(A) The applicant shall hold a current elevator contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(B) The applicant shall be a certified qualified conveyance company.

(C) The applicant shall submit proof of the following types of insurance coverage, in the form of certified copies of policies or certificates of insurance:

(i) Liability insurance to provide general liability coverage of not less than one million dollars ($1,000,000) for the injury or death of any one person or persons in any one occurrence, with coverage of not less than five hundred thousand dollars ($500,000) for property damage in any one occurrence.

(ii) Workers' compensation insurance coverage.

(D) In the event of any material alteration, nonrenewal, or cancellation of any insurance required by this subparagraph, the applicant or permitholder shall submit written notice thereof to the division within five working days.

(2) At a minimum, each application for a permit under this section shall include all of the following:

(A) Copies of specifications and accurately scaled and fully dimensioned plans showing the location of the installation in relation to the plans and elevation of the building; the location of the machinery room and the equipment to be installed, relocated, or altered; and all structural supporting members thereof, including foundations. The plans and specifications shall identify all materials to be employed and all loads to be supported or conveyed. The plans and specifications shall be sufficiently complete to illustrate all details of construction and design.

(B) The name, residence, and business address of the applicant and each partner, or for a corporation, the principal officers and anyone who is authorized to accept service of process or official notices; the number of years the applicant has engaged in the business of constructing, erecting, installing, or altering

conveyances; and the approximate number of persons to be employed on the permitted job.

(C) The permit fee.

(3) The division shall establish, and may from time to time amend, a fee for a permit under this section in an amount sufficient to defray the division's actual costs in administering the permit process, including the costs of investigation, revocation, or other associated costs. Permit fees collected by the division are nonrefundable.

(c) (1) The permit shall expire when the work authorized by that permit is not commenced within six months after the date of issuance, or within a shorter period as the division may specify at the time the permit is issued.

(2) The permit shall expire following commencement of work, if the permitholder suspends or abandons the work for a period of 60 days, or for a shorter period of time as the division may specify at the time the permit is issued.

(3) Upon application and for good cause shown, the division may extend a permit that would otherwise expire under this subdivision.

(d) The division may revoke any permit at any time, upon good cause, and after notice and an opportunity to be heard.

(Amended by Stats. 2004, Ch. 503, Sec. 4. Effective January 1, 2005.)

7301.5. (a) The standards board shall adopt regulations pertaining to conveyances, including, but not limited to, conveyance emergency and signal devices, and the operation of conveyances under fire and other emergency conditions.

(b) Before January 1, 2003, the division shall establish an application procedure and all requirements for certification under this subdivision as an emergency certified competent conveyance mechanic. To ensure the safety of the public when a disaster or other emergency exists within the state and the number of certified competent conveyance mechanics in the state is insufficient to cope with the emergency, any certified qualified conveyance company may, within five business days after commencing work requiring certified competent conveyance mechanics, apply to the division, on behalf of all persons performing the work who are not certified competent conveyance mechanics, for certification as emergency certified competent conveyance mechanics. Any person for whom emergency certification is sought under this subdivision shall be certified by a certified qualified conveyance company to have an acceptable combination of documented experience and education to perform work covered by this chapter without direct and immediate supervision. The certified qualified conveyance company shall furnish proof of competency as the division may require. The division shall issue an emergency certified competent conveyance mechanic certificate upon receipt of acceptable documentation and payment of the required fee. Each certificate issued pursuant to this subdivision shall recite that it is valid for a period of 30 days from the date of issuance and for those particular conveyances and geographical areas as the division may designate, and otherwise shall entitle the person being certified to the rights and privileges of a certified competent conveyance mechanic as set forth in this chapter. The division shall renew an emergency certified competent conveyance mechanic certificate during the existence of the emergency.

(c) Before January 1, 2004, the division shall establish an application procedure and all requirements for certification under this subdivision as a temporary certified competent conveyance mechanic. If there are no certified qualified conveyance mechanics available to perform elevator work, a certified qualified conveyance company may apply to the division for certification of one or more temporary certified competent conveyance mechanics. Any person seeking to work as a temporary certified competent conveyance mechanic shall, before beginning work, be approved by the division as having an acceptable combination of documented experience and education to perform work covered by this chapter without direct and immediate supervision. The certified qualified conveyance company shall furnish proof of competency as the division may require. The division may issue a temporary certified competent conveyance mechanic certificate upon acceptable documentation and payment of the required fee. Each certificate issued pursuant to this subdivision shall recite that it is valid for a period of 30 days from the date of issuance and while the certificate holder is employed by the certified qualified conveyance company that certified the individual as competent. The certificate shall be renewable as long as the shortage of certified competent conveyance mechanics continues.

(Amended by Stats. 2004, Ch. 503, Sec. 5. Effective January 1, 2005.)

7302. The operation of a conveyance without a permit by any person owning or having the custody, management, or control of the operation of the conveyance, is a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), imprisonment in the county jail for not more than 10 days, or by both that fine and imprisonment. Each day of operation for each conveyance without a permit is a separate offense. Any person who has requested the issuance or renewal of a permit if the request has not been acted upon by the division may not be prosecuted for a violation of this section.

(Repealed and added by Stats. 2002, Ch. 1149, Sec. 12. Effective January 1, 2003.)

7302.1. (a) Any person who contracts for or authorizes the erection, construction, installation, or material alteration of a conveyance without a permit in violation of Section 7301.1 is guilty of a misdemeanor punishable by a fine of not more than seventy thousand dollars ($70,000), imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) Any employer or contractor who contracts for or engages in the erection, construction, installation, or material alteration of a conveyance without a permit in violation of Section 7301.1 is guilty of a misdemeanor punishable by a fine of not more than seventy thousand dollars ($70,000), imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(Added by Stats. 2002, Ch. 1149, Sec. 13. Effective January 1, 2003.)

7302.2. The division may assess a civil penalty of not more than seventy thousand dollars ($70,000) against any person, and against any employer or contractor, who contracts for or authorizes the erection, construction, installation, or material alteration of a conveyance without a permit issued pursuant to Section 7301.1.

(Added by Stats. 2002, Ch. 1149, Sec. 14. Effective January 1, 2003.)

7303. (a) Whenever any conveyance is operated without a current valid permit issued pursuant to Section 7304, and is in a condition that its use is dangerous to the life or safety of any person, the division or any affected person may apply to the superior court of the county in which the conveyance is located for an injunction restraining the operation of the conveyance until the condition is corrected. Proof by certification of the division that a permit has not been issued, has expired, or has been revoked, together with the affidavit of any safety inspector of the division or other expert that the operation of the conveyance is dangerous to the life or safety of any person, is sufficient ground,

in the discretion of the court, for the immediate granting of a temporary restraining order.

(b) No bond shall be required from the division as a prerequisite for the division to seek or obtain any restraining order under subdivision (a).

(c) Any person who intentionally violates any injunction prohibiting the operation of the conveyance issued pursuant to subdivision (a) shall be liable for a civil penalty, to be assessed by the division, not to exceed seven thousand dollars ($7,000) for each violation. Each day of operation for each conveyance is a separate violation.

(Amended by Stats. 2002, Ch. 1149, Sec. 15. Effective January 1, 2003.)

7304. (a) Except as provided in subdivision (b), the division shall cause all conveyances to be inspected at least once each year. If a conveyance is found upon inspection to be in a safe condition for operation, a permit for operation for not longer than one year shall be issued by the division.

(b) If a conveyance is subject to a full maintenance service contract, the division may, after investigation and inspection, issue a permit for operation for not longer than two years.

(Amended by Stats. 2004, Ch. 183, Sec. 265. Effective January 1, 2005.)

7305. If inspection shows that a conveyance is in an unsafe condition, the division may issue a preliminary order requiring repairs or alterations to be made to the conveyance that are necessary to render it safe, and may prohibit its operation or use until the repairs or alterations are made or the unsafe conditions are removed.

(Amended by Stats. 2002, Ch. 1149, Sec. 17. Effective January 1, 2003.)

7306. Unless the preliminary order is complied with, a hearing before the division shall be allowed, upon request, at which the owner, operator, or other person in charge of the conveyance may appear and show cause why he or she should not comply with the order.

(Amended by Stats. 2002, Ch. 1149, Sec. 18. Effective January 1, 2003.)

7307. (a) If it thereafter appears to the division that the conveyance is unsafe and that the requirements contained in the preliminary order should be complied with, or that other things should be done to make the conveyance safe, the division may order or confirm the withholding of the permit and may impose requirements as it deems proper for the repair or alteration of the conveyance or for the correction of the unsafe condition. The order may thereafter be reheard by the division or reviewed by the courts in the manner specified for safety orders by Part 1 (commencing with Section 6300) of this division, and not otherwise.

(b) The operation of a conveyance by any person owning or having the custody, management, or control of the operation thereof, while an order to repair is outstanding pursuant to subdivision (a), is a misdemeanor punishable by a fine of not more than seven thousand dollars ($7,000), by imprisonment in the county jail for not more than 30 days, or by both that fine and imprisonment. Each day of operation for each conveyance without a permit is a separate offense.

(Amended by Stats. 2002, Ch. 1149, Sec. 19. Effective January 1, 2003.)

7308. If the operation of a conveyance during the making of repairs or alterations is not immediately dangerous to the safety of persons, the division may issue a temporary permit for its operation for a period not to exceed 30 days during the making of repairs or alterations.

(Amended by Stats. 2002, Ch. 1149, Sec. 20. Effective January 1, 2003.)

7309. The division may cause the inspection herein provided for to be made either by its safety inspectors or by any qualified elevator inspector employed by an insurance company.

(Amended by Stats. 1945, Ch. 1431.)

7309.1. (a) On and after June 30, 2003, no conveyance subject to this chapter shall be reinspected by any person unless the person is a conveyance inspector employed by the division or certified as qualified by the division.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for the certification of conveyance inspectors. Each application for certification shall include information as the division may require and the applicable fee. At a minimum, the applicant shall present proof of certification as a qualified conveyance inspector by the American Society of Mechanical Engineers or proof of education and experience equivalent to what is required to obtain that certification from the American Society of Mechanical Engineers.

(Amended by Stats. 2004, Ch. 503, Sec. 6. Effective January 1, 2005.)

7310. The division may also issue its permit or a permit may be issued on its behalf based upon a certificate of inspection issued by a conveyance inspector of any municipality, upon proof to the satisfaction of the division that the safety requirements of the municipality are equal to the minimum safety requirements for conveyances adopted by the board.

(Amended by Stats. 2004, Ch. 503, Sec. 7. Effective January 1, 2005.)

7311. All persons inspecting conveyances shall first secure from the division a certificate of competency to make those inspections. The division may determine the competency of any applicant for the certificate, either by examination or by other satisfactory proof of qualifications. The division may rescind at any time, upon good cause being shown therefor, and after hearing, if requested, any certificate of competency issued by it to a conveyance inspector.

(Amended by Stats. 2004, Ch. 503, Sec. 8. Effective January 1, 2005.)

7311.1. (a) On and after June 30, 2003, no conveyance subject to this chapter shall be erected, constructed, installed, materially altered, tested, maintained, repaired, or serviced by any person, firm, or corporation unless the person, firm, or corporation is certified by the division as a certified qualified conveyance company. A copy of the certificate shall be kept at the site of the conveyance at all times while any work is in progress, and shall be made available for inspection upon request. However, certification under this section is not required for removing or dismantling conveyances that are destroyed as a result of the complete demolition of a secured building or structure or where the hoistway or wellway is demolished back to the basic support structure and no access is permitted that would endanger the safety of any person. This section does not apply to platform lifts and stairway chairlifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for certification under this section as a certified qualified conveyance company, consistent with this section. At a minimum, the individual qualifying on behalf of a corporation, the owner on behalf of a sole ownership, or the partners on behalf of a partnership, shall meet either of the following requirements:

(1) Five years' work experience at a journeyperson level in the conveyance industry in construction, installation, alteration, testing, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be verified by

current and previously licensed elevator contractors or by current and previously certified qualified conveyance companies.

(2) Satisfactory completion of a written examination administered by the division on the most recent applicable codes and standards.

(c) At a minimum, each application for certification as a certified qualified conveyance company shall include:

(1) The name, residence and business address, and telephone numbers and other means to contact the sole owner or each partner, or for a corporation of the principal officers and the individual qualifying for the corporation; the number of years the applicant business has engaged in the business of constructing, maintaining, and service and repair of conveyances; and other information as the division may require.

(2) The fee required by this chapter.

(d) Before bidding for or engaging in any work covered by this chapter, a certified qualified conveyance company shall submit proof to the division by certified copies of policies or certificates of insurance, of all of the following:

(1) Liability insurance providing general liability coverage of not less than one million dollars ($1,000,000) for injury or death of any one person or persons in any one occurrence, with coverage of not less than five hundred thousand dollars ($500,000) for property damage of any one person or persons in any one occurrence.

(2) Workers' compensation insurance coverage.

(3) In the event of any material alteration or cancellation of any policy specified in paragraph (1) or (2), the certified qualified conveyance company shall provide written notice thereof to the division within five working days.

(e) An elevator company subject to this chapter shall disclose its status as a certified qualified conveyance company prior to bidding on a project or prior to contracting for services. The disclosure shall be in writing and located in a conspicuous place on the bid documents or contract in at least 10-point type.

(Amended by Stats. 2009, Ch. 196, Sec. 1. Effective January 1, 2010.)

7311.2. (a) On and after June 30, 2003, except as provided in subdivisions (b) and (c) of Section 7301.5, any person who, without supervision, erects, constructs, installs, alters, tests, maintains, services or repairs, removes, or dismantles any conveyance covered by this chapter, shall be certified as a certified competent conveyance mechanic by the division. This section does not apply to platform lifts and stairway chairlifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for certification under this section as a certified competent conveyance mechanic, consistent with all of the following:

(1) At a minimum, a certified competent conveyance mechanic applicant shall meet both of the following requirements:

(A) Three years' work experience in the conveyance industry in construction, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be verified by current and previously licensed elevator contractors or by current and previously certified qualified conveyance companies, as required by the division.

(B) One of the following:

(i) Satisfactory completion of a written examination administered by the division on the most recent applicable codes and standards.

(ii) A certificate of completion and successfully passing the mechanic examination of a nationally recognized training program for the conveyance industry, such as the National Elevator Industry Educational Program or its equivalent.

(iii) A certificate of completion of an apprenticeship program for elevator mechanic, having standards substantially equal to those of this chapter, and which program shall be registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship council.

(iv) A certificate or license from another state having standards substantially equal to or more comprehensive than those of this chapter.

(v) The applicant applies on or before December 31, 2003, and within the three years immediately prior to January 1, 2003, has documented at least three years of actual work experience in the conveyance industry in construction, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be as a journey-level mechanic working without direct and immediate supervision, and shall be verified by currently and previously licensed conveyance contractors or by current and previously certified qualified conveyance companies, as required by the division.

(2) At a minimum, each application for certification as a certified competent conveyance mechanic shall include the information required by the division and the fee required by this chapter.

(Amended by Stats. 2004, Ch. 503, Sec. 10. Effective January 1, 2005.)

7311.25. (a) The following meanings apply for purposes of this section:

(1) "Agricultural production, processing, and handling facilities" includes grain elevators, feed mills, flour mills, rice mills, rice dryers, and other similar facilities.

(2) "Applicable Elevator Safety Orders" means the Elevator Safety Orders referenced in Subchapter 6 (commencing with Section 3000) of Chapter 4 of Division 1 of Title 8 of the California Code of Regulations, and any successors to those orders.

(b) Notwithstanding Section 7311.2 or any other provision of this chapter, an owner or operator of agricultural production, processing, and handling facilities may designate a competent person in his or her employ to maintain, repair, service, lubricate, or test manlifts installed and used at the facilities if the manlifts are maintained and inspected in accordance with applicable Elevator Safety Orders. The designated competent person need not be a certified competent conveyance mechanic.

(Added by Stats. 2009, Ch. 196, Sec. 2. Effective January 1, 2010.)

7311.3. (a) A certificate issued by the division to the certified qualified conveyance inspector, certified qualified conveyance company, or certified competent conveyance mechanic as set forth in Sections 7309.1, 7311.1, and 7311.2, shall have a term of two years. The fee for biennial renewal shall be established by the division in an amount sufficient to defray the division's costs of administering this chapter.

(b) The renewal of all certificates issued under this chapter shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of certificate holders on new and existing provisions of the regulations of the board. This continuing education course shall consist of not less than eight hours of instruction that shall be attended and completed within one year immediately preceding any certificate renewal.

(c) The courses shall be taught by instructors through continuing education providers that may include, but not be

limited to, division programs, association seminars, and joint labor-management apprenticeship and journeyman upgrade training programs. The division shall approve the continuing education providers and curriculum. All instructors shall be approved by the division and shall be exempt from the requirements of subdivision (b), provided that the applicant is qualified as an instructor at any time during the one-year period immediately preceding the scheduled date for renewal.

(d) A certificate holder who is unable to complete the continuing education course required under this section prior to the expiration of his or her certificate due to a temporary disability may apply for a waiver from the division. Waiver applications shall be submitted to the division on a form provided by the division. Waiver applications shall be signed and accompanied by a declaration signed by a competent physician attesting to the applicant's temporary disability. Upon the termination of the temporary disability, the certificate holder shall submit to the division a declaration from the same physician, if practicable, attesting to the termination of the temporary disability, and a waiver sticker, valid for 90 days, shall be issued to the certificate holder and affixed to his or her certificate.

(e) Continuing education providers approved by the division shall keep uniform records, for a period of 10 years, of attendance of certificate holders, following a format approved by the division. These records shall be available for inspection by the division at its request. Approved continuing education providers shall keep secure all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify attendance records or certificates of completion of continuing education provided pursuant to this section shall constitute grounds for suspension or revocation of the approval required under this section.

(Amended by Stats. 2004, Ch. 503, Sec. 11. Effective January 1, 2005.)

7311.4. (a) The division shall establish fees for initial and renewal applications for certification under this chapter as a certified qualified conveyance inspector, certified qualified conveyance company, or certified competent conveyance mechanic based upon the costs to the division of administering the certification and licensing program in this chapter, including the cost of developing and administering any tests as well as any costs related to continuing education, investigation, revocation, or other associated costs. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this chapter.

(b) Fees collected pursuant to this chapter are nonrefundable.

(Amended by Stats. 2016, Ch. 31, Sec. 196. Effective June 27, 2016.)

7311.5. (a) A person, firm, or corporation that maintains and repairs solely special purpose personnel elevators on cranes that utilize a rack and pinion system in marine terminals as part of crane maintenance activities qualifies as a certified qualified conveyance company under Section 7311.1 if the individual qualifying individually or on behalf of the firm or corporation has five years' work experience at a journeyperson level in the crane maintenance industry, including experience in the maintenance and repair of crane elevators. This experience shall be verified by a person, firm, or corporation in the business of maintaining and repairing cranes in marine terminals.

(b) A person qualifies as a certified competent conveyance mechanic under Section 7311.2 if the person has three years' work experience in the crane maintenance industry, including experience in the maintenance and repair of crane elevators, as a journey-level mechanic without direct and immediate supervision. This experience shall be verified by a crane maintenance company approved as a certified qualified conveyance company pursuant to subdivision (a).

(c) The certifications obtained pursuant to this section may only be used for the limited purposes of maintaining and repairing special purpose personnel elevators on cranes that utilize a rack and pinion system in marine terminals.

(d) A person, firm, or corporation that qualifies for certification as a certified qualified conveyance company or certified competent conveyance mechanic is not authorized to perform any of the following procedures:

(1) Any work on a conveyance other than a special purpose personnel elevator on cranes that utilize a rack and pinion system in marine terminals.

(2) Any work related to new elevator installations.

(3) Any modifications or alterations of existing elevator systems.

(4) Testing or replacing of emergency brakes, centrifugal brakes, emergency safety devices, or electrical systems.

(5) Annual certifications of any type of conveyance or elevator.

(e) The certifications authorized by this section require experience but do not require an examination because the general examination given pursuant to this chapter is inapplicable to the work described in this section. The division is not required to set up specialty examinations to certify persons pursuant to this chapter.

(f) For purposes of this section, the following terms shall have the following meanings:

(1) "Special purpose personnel elevators" shall have the same meaning as defined in Section 3085 of Title 8 of the California Code of Regulations.

(2) "Marine terminal" shall have the same meaning as used in Section 3460 of Title 8 of the California Code of Regulations.

(g) Nothing in this section exempts a person, firm, or corporation applying for certification as a certified qualified conveyance company or a certified competent conveyance mechanic under this section from paying the administration fees required under this chapter.

(Added by Stats. 2006, Ch. 448, Sec. 1. Effective January 1, 2007.)

7312. The division may at any time, upon good cause being shown therefor, and after notice and an opportunity to be heard, revoke any permit to operate a conveyance.

(Amended by Stats. 2002, Ch. 1149, Sec. 28. Effective January 1, 2003.)

7313. Each conveyance inspector shall, within 21 days after he or she makes an inspection, forward to the division on forms provided by it, a report of the inspection. Failure to comply with this section shall be grounds for the division to cancel his or her certificate.

(Amended by Stats. 2004, Ch. 503, Sec. 13. Effective January 1, 2005.)

7314. (a) The division shall, subject to subdivision (f), fix and collect fees for the inspection of conveyances as it determines to be necessary to cover the costs to the division of administering the inspection and permitting programs in this chapter, including fees for necessary subsequent inspections to determine if applicable safety orders have been complied with and for field consultations. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this chapter, including the costs related to regulatory development as required by Section 7323.

(b) Notwithstanding Section 6103 of the Government Code, the division may collect the fees authorized by subdivision (a) from the state or any county, city, district, or other political subdivision.

(c) Whenever a person owning or having the custody, management, or operation of a conveyance fails to pay the fees required under this chapter within 60 days after the date of notification, he or she shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of the fee. Failure to pay fees within 60 days after the date of notification constitutes cause for the division to prohibit use of the conveyance.

(d) (1) Any fees required pursuant to this section shall, except as otherwise provided in paragraph (2), be set forth in regulations that shall be adopted as emergency regulations. These emergency regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). These regulations shall become effective immediately upon filing with the Secretary of State.

(2) A suspension or reduction of fees pursuant to subdivision (f) is not required to be set forth in a regulation.

(e) For purposes of this section, the date of the invoice assessing a fee pursuant to this section shall be considered the date of notification.

(f) (1) For the 2015–16 fiscal year, the fees for the annual and biennial inspection of conveyances required by Section 7304 are suspended on a one-time basis.

(2) For the 2016–17 fiscal year, and for every fiscal year thereafter, the Director of Industrial Relations, upon concurrence of the Department of Finance, may suspend or reduce the fees for the annual and biennial inspections of conveyances required by Section 7304 on a one-time basis for that fiscal year in order to reduce the amount of moneys in the Elevator Safety Account.

(Amended by Stats. 2016, Ch. 31, Sec. 197. Effective June 27, 2016.)

7315. Fees shall be paid before the issuance of any permit to operate a conveyance, but a temporary permit may be issued pending receipt of fee payment. The division shall not charge an inspection fee if an inspection has been made by an inspector of an insurance company or municipality who holds a certificate as a conveyance inspector and an inspection report is filed with the division within 21 days after inspection is made. The division may charge a fee for processing and issuing the permit to operate.

(Amended by Stats. 2016, Ch. 31, Sec. 198. Effective June 27, 2016.)

7316. All fees collected by the division under this chapter shall be paid into the Elevator Safety Account which is hereby created for the administration of the division's conveyance safety program. The division shall establish criteria upon which fee charges are based and prepare an annual report concerning revenues obtained and expenditures appropriated for the conveyance safety program. The division shall file the report with the Legislative Analyst, the Joint Legislative Audit Committee, and the Department of Finance.

(Amended by Stats. 2004, Ch. 503, Sec. 15. Effective January 1, 2005.)

7317. (a) Except as provided in subdivision (b), the following conveyances are exempt from this chapter:

(1) Conveyances under the jurisdiction of the United States government.

(2) Conveyances located in a single-unit private home and not accessible to the public.

(3) Conveyances located in a multiunit residential building serving no more than two dwelling units and not accessible to the public.

(b) Conveyances otherwise exempted pursuant to paragraph (3) of subdivision (a) shall be inspected by the division upon completion of installation prior to being placed in service or after major alterations. The inspection shall be for safety and compliance with orders or regulations applicable to the type of conveyance installed.

(Amended by Stats. 2002, Ch. 1149, Sec. 33. Effective January 1, 2003.)

7318. Nothing in this chapter limits the authority of the division to prescribe or enforce general or special safety orders.

(Amended by Stats. 2002, Ch. 1149, Sec. 34. Effective January 1, 2003.)

7319. All elevators used for the carriage of passengers shall be provided with a suitable seat for the operator in charge. Failure to comply with this section is a misdemeanor punishable by a fine not exceeding fifty dollars ($50) for each offense.

(Amended by Stats. 1983, Ch. 1092, Sec. 224. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

7320. The division may assess a civil penalty not to exceed one thousand dollars ($1,000) against any person owning or having custody, management, or control of the operation of a conveyance, who operates the conveyance without a permit or who fails to conspicuously post the permit in the conveyance. No penalty shall be assessed against any person who has requested the issuance or renewal of a permit and the request has not been acted upon by the division.

(Amended by Stats. 2002, Ch. 1149, Sec. 35. Effective January 1, 2003.)

7321. (a) The division may assess a civil penalty not to exceed seventy thousand dollars ($70,000) against any person owning or having custody, management, or control of the operation of a conveyance, who operates or permits the operation of the conveyance in a condition that is dangerous to the life or safety of any person, or who operates or permits the operation of the conveyance in violation of an order prohibiting use issued pursuant to Section 7301, 7305, or 7314.

(b) The division shall issue an order prohibiting use and may assess a civil penalty not to exceed seventy thousand dollars ($70,000) against any person who constructs, installs, or materially alters a conveyance without a permit issued pursuant to Section 7301.1 that is dangerous to the life or safety of any person.

(Amended by Stats. 2002, Ch. 1149, Sec. 36. Effective January 1, 2003.)

7321.5. The division shall enforce Sections 7320 and 7321 by issuance of a citation and notice of civil penalty in a manner consistent with Sections 6317 and 6319. Any person owning or having custody, management, or control of the operation of a conveyance who receives a citation and notice of civil penalty may appeal to the Occupational Safety and Health Appeals Board in a manner consistent with Section 6319.

(Amended by Stats. 2002, Ch. 1149, Sec. 37. Effective January 1, 2003.)

7322. (a) Once an authorized representative of the division has issued an order prohibiting the use of a conveyance as specified in Sections 7301, 7305, 7314, or subdivision (b) of Section 7321, the person owning or having custody, management, or operation of the conveyance may contest the order and shall be granted, upon request, a hearing to review the validity of the order. The hearing shall be held no later than 10 working days following receipt of the request for hearing.

(b) After a notice is attached as provided in Section 7305 or subdivision (b) of Section 7321, every person who enters or uses, or directs or causes another to enter or use, any conveyance before it is made safe, or who defaces, destroys, or removes the notice

without the authority of the division, is guilty of a misdemeanor punishable by a fine of not more than seventy thousand dollars ($70,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) After a notice is attached for failure to comply with the requirements of Section 7301 or 7314, every person who enters or uses, or directs or causes another to enter or use, any conveyance before it is made safe, or who defaces, destroys, or removes the notice without the authority of the division, is guilty of a misdemeanor punishable by a fine of not more than seven thousand dollars ($7,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.

(Amended by Stats. 2002, Ch. 1149, Sec. 38. Effective January 1, 2003.)

7323. The division shall propose to the standards board for review, and the standards board shall adopt, regulations for the equipment covered by this chapter. Not later than December 31, 2003, the division shall propose final rulemaking proposals to the standards board for review and adoption, which shall include provisions at least as effective as ASME A17.1, ASME A17.3, ASME A18.1, and ASCE 21, as in effect prior to September 30, 2002. Not later than nine months after the effective date of any revision or any substantive revision to any addendum to these codes, the division shall propose additional final rulemaking proposals to the standards board for review and adoption at least as effective as those in the revised code or addendum. The standards board shall notice the division's final rulemaking proposals for public hearing within three months of their receipt and shall adopt the proposed regulations promptly and in accordance with subdivision (b) of Section 11346.4 of the Government Code.

(Added by Stats. 2002, Ch. 1149, Sec. 39. Effective January 1, 2003.)

7324. Individuals, firms, or companies certified as described in this chapter shall ensure that installation, service, and maintenance of conveyances are performed in compliance with the provisions contained in the State Fire Prevention and Building Code and with generally accepted standards referenced in that code.

(Amended by Stats. 2004, Ch. 503, Sec. 16. Effective January 1, 2005.)

7324.1. This chapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, testing, or repairing any conveyance or other related mechanisms covered by this chapter for damages to any person or property caused by any defect therein.

(Added by Stats. 2002, Ch. 1149, Sec. 41. Effective January 1, 2003.)

7324.2. The provisions of this chapter added or amended by the act enacting this section shall not be applied retroactively. Equipment subject to this chapter shall be required to comply with the applicable standards in effect on the date of its installation or within the period determined by the board for compliance with ASME A17.3, whichever is more stringent.

(Added by Stats. 2002, Ch. 1149, Sec. 42. Effective January 1, 2003.)

Chapter 3. Safety Devices Upon Buildings to Safeguard Window Cleaners

(Chapter 3 added by Stats. 1941, Ch. 544.)

7325. "Building," as used in this chapter, means any building three stories or more in height, and whether heretofore constructed or hereafter to be constructed, including commercial buildings of all types, office buildings, apartment houses, hotels and buildings used for manufacturing purposes, but excluding dwelling houses occupied by not more than three families, and excluding all buildings constructed with windows that may be, and are, entirely washed and cleaned from inside the building or from a sitting position on the window sill in the manner provided by safety orders issued, or which may be issued from time to time, by the division.

(Amended by Stats. 1945, Ch. 1431.)

7326. There shall be securely attached to the outside window sills or frames of the window of any building, rings, bolts, lugs, fittings, or other devices to which may be fastened safety belts or other devices to be used, or which may hereafter be used by persons engaged in cleaning windows. The division shall, prior to the installation of any such bolts, lugs, rings, fittings, or other devices, approve such bolts, lugs, rings, fittings, or other devices as to their design, durability, and safety. Except as provided in Section 18930 of the Health and Safety Code, the division shall by appropriate rules and orders designate the manner in which said safety devices are to be attached, installed, and used.

(Amended by Stats. 1979, Ch. 1152.)

7327. In lieu of the safety devices enumerated in Section 7326, the division may approve the installation or use of any other devices or means which will effectively safeguard persons engaged in cleaning windows.

(Amended by Stats. 1945, Ch. 1431.)

7328. Any person employing, directing or permitting another to do or perform any labor upon any windows which have not the safety devices as provided for in Sections 7326 and 7327 shall be guilty of a misdemeanor.

(Added by Stats. 1941, Ch. 544.)

7329. Every person owning or entitled to possession, under any lease, sublease, or agreement for a longer period than one year, or under any renewal lease, sublease, or agreement for a period of less than one year, of any building heretofore constructed shall, within six months following the effective date of this chapter, install and provide the safety devices as provided for in this chapter, and thereafter maintain such safety devices in good condition. Any person failing to install or provide and maintain said safety devices as provided for in this chapter shall be guilty of a misdemeanor.

(Added by Stats. 1941, Ch. 544.)

7330. Every person who fails to provide the safety devices as set forth in this chapter upon any building hereafter to be constructed, and who thereafter fails to maintain such devices in good condition, shall be guilty of a misdemeanor.

(Added by Stats. 1941, Ch. 544.)

7331. The division may make and enforce such safety orders and rules as it considers necessary and proper to carry into effect the purposes and provisions of this chapter.

The division shall give notice to the owner or person entitled to possession of any building that is existing in violation of this chapter or of any rules issued under this chapter. Failure of the person so notified to comply with this chapter and rules issued under it, within 15 days, shall be authority for the division to proceed against such person as authorized in this chapter.

(Amended by Stats. 1945, Ch. 1431.)

7332. The division shall enforce the provisions of this chapter.

(Amended by Stats. 1945, Ch. 1431.)

Chapter 4. Passenger Tramways

(Heading of Chapter 4 amended by Stats. 2016, Ch. 31, Sec. 199.)

7340. As used in this chapter:

(a) "Passenger tramway" includes any method or device used primarily for the purpose of transporting persons by means of cables or ropes suspended between two or more points or structures.

(b) "Permit" means a permit issued by the division to operate a passenger tramway in any place.

(Amended by Stats. 2016, Ch. 31, Sec. 200. Effective June 27, 2016.)

7341. A passenger tramway shall not be operated in any place in this state unless a permit for the operation of the tramway is issued by the division, and unless the permit remains in effect and is kept posted conspicuously in the main operating terminal of the tramway.

(Amended by Stats. 2016, Ch. 31, Sec. 201. Effective June 27, 2016.)

7342. The operation of a passenger tramway by any person owning or having the custody, management, or operation thereof without a permit is a misdemeanor, and each day of operation without a permit is a separate offense. No prosecution shall be maintained where the issuance or renewal of a permit has been requested and remains unacted upon.

(Amended by Stats. 2016, Ch. 31, Sec. 202. Effective June 27, 2016.)

7343. Whenever a passenger tramway in any place is being operated without the permit herein required, and is in such condition that its use is dangerous to the life or safety of any person, the division, or any person affected thereby, may apply to the superior court of the county in which the passenger tramway is located for an injunction restraining the operation of the passenger tramway until the condition is corrected. Proof by certification of the division that a permit has not been issued, together with the affidavit of any safety engineer of the division that the operation of the passenger tramway is dangerous to the life or safety of any person, is sufficient ground, in the discretion of the court, for the immediate granting of a temporary restraining order.

(Amended by Stats. 2016, Ch. 31, Sec. 203. Effective June 27, 2016.)

7344. (a) The division shall cause all passenger tramways to be inspected at least two times each year.

(b) At least one of the inspections required by subdivision (a) shall take place between November 15 of each year and March 15 of the succeeding year.

(c) If a passenger tramway is found upon inspection to be in a safe condition for operation, a permit for operation for not longer than one year shall be issued by the division.

(Amended by Stats. 2016, Ch. 31, Sec. 204. Effective June 27, 2016.)

7345. If inspection shows a passenger tramway to be in an unsafe condition, the division may issue a preliminary order requiring repairs or alterations to be made to the passenger tramway that are necessary to render it safe, and may order the operation or use thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed.

(Amended by Stats. 2016, Ch. 31, Sec. 205. Effective June 27, 2016.)

7346. Unless the preliminary order is complied with, a hearing before the division shall be allowed, upon request, at which the owner, operator, or other person in charge of the passenger tramway may appear and show cause why he should not comply with the order.

(Amended by Stats. 2016, Ch. 31, Sec. 206. Effective June 27, 2016.)

7347. If it thereafter appears to the division that the passenger tramway is unsafe and that the requirements contained in the preliminary order should be complied with, or that other things should be done to make the passenger tramway safe, the division may order or confirm the withholding of the permit and may make requirements as it determines to be proper for its repair or alteration or for the correction of the unsafe condition. The order may thereafter be reheard by the division or reviewed by the courts only in the manner specified for safety orders by Part 1 (commencing with Section 6300).

(Amended by Stats. 2016, Ch. 31, Sec. 207. Effective June 27, 2016.)

7348. If the operation of a passenger tramway during the making of repairs or alterations is not immediately dangerous to the safety of employees or others, the division may issue a temporary permit for the operation of the tramway for a term not to exceed 30 days during the making of repairs or alterations.

(Amended by Stats. 2016, Ch. 31, Sec. 208. Effective June 27, 2016.)

7349. The inspection herein provided for shall be made by a division safety engineer or, on ski lifts, by a certified tramway inspector qualified under Section 7354.5 and employed by a licensed insurance company. A temporary permit for operation may be issued by a division engineer or by the qualified insurance inspector, on a form furnished by the division, under conditions of Sections 7348 and 7351.

(Amended by Stats. 1974, Ch. 863.)

7350. (a) The division shall fix and collect fees for the inspection of passenger tramways as it deems necessary to cover the costs of the division in administering this chapter. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this chapter. The division shall not charge an inspection fee for inspections performed by certified insurance inspectors, but may charge a fee for processing the permit when issued by the division as a result of the inspection. Notwithstanding Section 6103 of the Government Code, the division may collect the fees authorized by this section from the state or any county, city, district, or other political subdivision.

(b) Whenever a person owning or having custody, management, or operation of a passenger tramway fails to pay any fee required under this chapter within 60 days after the date of notification by the division, the division shall assess a penalty fee equal to 100 percent of the initial fee. For purposes of this section, the date of the invoice fixing the fee shall be considered the date of notification.

(Amended by Stats. 2016, Ch. 31, Sec. 209. Effective June 27, 2016.)

7351. Fees shall be paid before issuance of a permit to operate a passenger tramway, except that the division, at its own discretion, may issue a temporary operating permit not to exceed 30 days, pending receipt of payment of fees.

(Amended by Stats. 2016, Ch. 31, Sec. 210. Effective June 27, 2016.)

7352. (a) All fees collected by the division under this chapter shall be deposited into the Occupational Safety and Health Fund to support the division's passenger tramway inspection program.

(b) On the effective date of the statute adding this subdivision, any moneys in the Elevator Safety Account that, before that date, were deposited pursuant to this section, subdivision (a) of Section 7904, or subdivision (b) of Section 7929 shall be transferred to the Occupational Safety and Health Fund, together with any assets, liabilities, revenues, expenditures, and encumbrances of that fund that are attributable to the division's passenger tramway inspection program under this chapter, the portable amusement ride inspection program under Part 8 (commencing with Section 7900), and the Permanent Amusement Ride Safety Inspection Program (Part 8.1 (commencing with Section 7920)).

(Amended by Stats. 2016, Ch. 31, Sec. 211. Effective June 27, 2016.)

7353. (a) A passenger tramway shall not be constructed or altered until the plans and design information have been properly certified to the division by an engineer qualified under

the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(b) Any person who owns, has custody of, manages, or operates a passenger tramway shall notify the division prior to any major repair of the tramway.

(Amended by Stats. 2016, Ch. 31, Sec. 212. Effective June 27, 2016.)

7354. The division shall not issue an operating permit to operate a passenger tramway until it receives certification in writing by an engineer qualified under the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code) that the erection work on the tramway has been completed in accordance with the design and erection plans for the tramway.

(Amended by Stats. 2016, Ch. 31, Sec. 213. Effective June 27, 2016.)

7354.5. (a) Notwithstanding any other provision of this chapter, in any case in which an insurer admitted to transact insurance in this state has inspected or caused to be inspected, by a qualified, licensed professional engineer registered in California pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, any passenger tramway used as a ski lift, the division may, if it finds those inspections were made according to subdivisions (a) and (b) of Section 7344, accept the inspections in lieu of any other inspections for that year, except that the initial inspection of a new ski lift or of a major alteration to an existing ski lift shall be performed by a division safety engineer. A private inspector shall, before commencing his or her duties therein, secure from the division a certificate of competency to make inspections. The division may determine the competency of any applicant for a certificate, either by examination or by other satisfactory proof of qualification.

(b) The division may rescind at any time, upon good cause being shown therefor, and after hearing, if requested, any certificate of competency issued by it to a ski lift inspector. The inspection reports made to the division shall be in a form and content as the division finds necessary for acceptance as a proper inspection made by a private inspector.

(Amended by Stats. 2016, Ch. 31, Sec. 214. Effective June 27, 2016.)

7355. Nothing in the foregoing sections of this chapter shall limit the authority of the division to prescribe or enforce general or special safety orders.

(Added by Stats. 1965, Ch. 1047.)

7356. The division shall, under the authority of Section 7355, promulgate and cause to be published safety orders directing each owner or operator of a passenger tramway to report to the division each known incident where the maintenance, operation, or use of the tramway results in injury to any person, unless the injury does not require medical service other than ordinary first aid treatment.

(Amended by Stats. 2016, Ch. 31, Sec. 215. Effective June 27, 2016.)

7357. The division shall establish standards for the qualification of persons engaged in the operation of passenger tramways, whether as employees or otherwise. The standards shall be consistent with the general objective of this chapter in providing for the safety of members of the public who use passenger tramways and those engaged in their operation.

(Amended by Stats. 2016, Ch. 31, Sec. 216. Effective June 27, 2016.)

Chapter 5. Cranes

(Chapter 5 added by Stats. 1990, Ch. 1033, Sec. 1.)

Article 1. Permits for Tower Cranes

(Article 1 added by Stats. 1990, Ch. 1033, Sec. 1.)

7370. (a) The Legislature finds and declares that recent statewide spot inspections of cranes have uncovered a pattern of numerous safety violations so serious and pervasive that safety inspections shall be a continuing priority with regard to all tower cranes in the state.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7371. As used in this chapter, the following definitions shall apply:

(a) "Crane" means a machine for lifting or lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. It may be driven manually or by power and may be a fixed or a mobile machine, but does not include stackers, lift trucks, power shovels, backhoes, excavators, concrete pumping equipment, or straddle type mobile boat hoists.

(b) "Straddle type mobile boat hoist" means a straddle type carrier supported by four wheels with pneumatic tires capable of straddling and carrying boats with high masts and superstructure.

(c) "Tower crane" means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

(d) "Mobile tower crane" means a tower crane which is mounted on a crawler, truck, or similar carrier for travel or transit.

(e) "Crane employer" means an employer who is responsible for the maintenance and operation of a tower crane.

(f) "Certificating agency" shall have the same definition as in Section 4885 of Title 8 of the California Code of Regulations.

(Amended by Stats. 1992, Ch. 254, Sec. 1. Effective January 1, 1993.)

7372. (a) The division shall employ safety engineers trained to inspect tower cranes.

(b) The division shall establish a safety inspection program for all tower cranes operated in the state. This safety program shall include:

(1) Safety inspection of tower cranes twice a year.

(2) Increased penalties for the violation of tower crane safety orders and standards.

(3) Permit fees as described in Section 7373.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7373. (a) A tower crane shall not be operated at any worksite unless an employer obtains a permit from the division. The division shall conduct an investigation for purposes of issuing a permit in an expeditious manner. If the division does not issue a permit within 10 days after being requested to do so by a crane employer, the crane employer may operate the crane without a permit.

(b) The division shall set fees to be charged for these permits in an amount sufficient to cover the costs of administering this article. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this article.

(c) The permit for a fixed tower crane shall be valid for the period of time that the tower crane is fixed to the site.

(d) The permit for a mobile tower crane shall be valid for one calendar year.

(Amended by Stats. 2016, Ch. 31, Sec. 217. Effective June 27, 2016.)

7374. (a) The division may suspend or revoke the permit of a crane where the employer engages in gross negligence, gross

incompetence, or willful or repeated disregard of any occupational safety standard or order involving the crane.

(b) The permit of the crane shall be suspended or revoked for a six-month period for first-time suspensions or revocations, and for a one-year period for each subsequent suspension or revocation. The division shall establish a suspension and revocation hearing procedure and appeal process.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

Article 2. Certification

(Article 2 added by Stats. 1990, Ch. 1033, Sec. 1.)

7375. (a) The division shall adopt regulations for the certification of all cranes and derricks used in lifting service, exceeding three tons rated capacity. Tower cranes shall be certified annually and whenever they are erected on a new site.

(b) These regulations shall specify the procedure for licensing the certificating agencies or agents to conduct certification inspections, and shall establish specific criteria for licensure as a certifier, including a written examination.

(c) No individual may certify a crane in which the individual or his or her employer has a direct or indirect financial interest, nor may an individual certify equipment that belongs to his or her employer. An individual may not certify equipment or devices that he or she has manufactured or helped to manufacture, if the equipment is owned by his or her employer. However, this subdivision shall not prohibit any of the following:

(1) The licensure of certifiers who are employed by insurance carriers that insure the specific crane.

(2) Except with respect to certification of tower cranes, the licensure of certifiers who are employed by an electrical, gas, or telephone corporation, as defined in Sections 218, 222, and 234, respectively, of the Public Utilities Code, or a municipal utility serving a city having a population of 3,000,000 or more, that is issued a certificate of self-insurance pursuant to Article 3 (commencing with Section 16050) of Chapter 1 of Division 7 of the Vehicle Code and that is a self-insured employer under Article 1 (commencing with Section 3700) of Chapter 4 of Division 4 of this code.

(d) The certificating agency shall attest that it tested or examined the device or equipment and found it to meet the requirements of the division.

(e) The certificating agency shall notify the division of any deficiencies found during the crane certification inspection. A certificate shall not be issued until all deficiencies are corrected.

(Amended by Stats. 1994, Ch. 604, Sec. 1. Effective January 1, 1995.)

7376. (a) The division shall suspend or revoke a license to certify for the following reasons:

(1) Gross negligence, gross incompetency, a pattern of incompetence, or fraud in the certification of a crane.

(2) Willful or deliberate disregard of any occupational safety standard while certifying a crane.

(3) Misrepresentation of a material fact in applying for, or obtaining, a license to certify under this chapter.

(4) Upon a showing of good cause.

(b) The period of suspension or revocation shall be for six months for a first suspension or revocation, and one year for each subsequent suspension or revocation. The certificating agency shall obtain a new license from the division following a suspension or revocation. The division shall establish a hearing procedure and an appeal process for license suspensions and revocations.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7377. Revocation of a license to certify may be appealed to the Director of Industrial Relations.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7378. A licensed certifier who fraudulently certifies that a crane is in compliance with the criteria established by the division under subdivision (a) of Section 7375 is guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or both.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7379. It shall be a misdemeanor for an individual to engage in the certification of a crane as specified in this chapter if that individual is not licensed pursuant to this chapter. Any violation of this section shall be punishable by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or both.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7380. (a) The division shall set fees for the examination and licensing of crane certifiers as necessary to cover the costs of administering this article. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this article.

(b) All fees collected by the division under this chapter shall be deposited into the Occupational Safety and Health Fund.

(Repealed and added by Stats. 2016, Ch. 31, Sec. 219. Effective June 27, 2016.)

7381. (a) Notwithstanding Sections 6319 and 6425, if serious injury or death is caused by any serious or willful repeated violation of a crane standard, order, or special order, or by any failure to correct a serious violation of a crane standard, order, or special order within the time specified for its correction, the employer shall be assessed a civil penalty in an amount equal to double the maximum penalty allowable for each violation contributing to the injury or death.

(b) Notwithstanding any provision of this division, any employer who violates any tower crane standard, order, or special order, if that violation is a serious violation, shall be assessed a civil penalty of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) for each serious violation. The penalty shall not be reduced for any of the reasons listed in Section 6319.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7382. No person shall install or dismantle a tower crane, or increase the height of a crane, known in the construction trade as "jumping or climbing a crane," without a safety representative of the crane manufacturer, distributor, or a representative of a licensed crane certifier being present on site for consultation during the procedure. The standards board shall adopt a regulation making failure to provide the designated safety representative a serious violation of a safety order. Local governmental entities may restrict the hours during which these procedures may be performed.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7383. (a) The division shall require all crane employers to disclose all of their previous business identities within the previous 10 years. The disclosure shall be made to the division on forms provided by the division. The division shall maintain the confidentiality of this information.

(b) The division shall consider the violations of safety and health orders and standards of the previous business identities

when assessing penalties against a crane employer for current violations.

(c) For purposes of this section "business identities" means current and previous business affiliations in the construction industry which involve the use of cranes. These shall include, but not be limited to, fictitious business names and corporate names.

(d) The purpose of this section is to enable the division to get a complete safety record of crane employers when assessing penalties for the violation of safety orders.

(Added by Stats. 1990, Ch. 1033, Sec. 1.)

7384. The division shall prepare an annual report concerning revenues obtained from all funding sources and expenditures. The division shall file the report with the Legislative Analyst, the Joint Legislative Audit Committee, the Department of Finance, and the appropriate policy committees of the Legislature.

(Amended by Stats. 2006, Ch. 538, Sec. 494. Effective January 1, 2007.)

Part 4. Mining Industries

(Part 4 enacted by Stats. 1937, Ch. 90.)

Chapter 3. Underground Telephones

(Chapter 3 enacted by Stats. 1937, Ch. 90.)

7500. In all mines operated in the State where a depth of more than five hundred feet underground has been reached, a telephone system shall be established, equipped and maintained by the owners or lessees of the mine with stations at each working level below the depth aforesaid, communicating with a station on the surface of the mine.

(Enacted by Stats. 1937, Ch. 90.)

7501. The failure or refusal of any owner or lessee to install or maintain such telephone system is a misdemeanor.

(Enacted by Stats. 1937, Ch. 90.)

Part 5. Ships And Vessels

(Part 5 enacted by Stats. 1937, Ch. 90.)

7600. Every person who is engaged in the business of loading or unloading ships or vessels, or who is authorized or contracts to load or unload a ship or vessel, or who is in charge of a ship or vessel while it is being loaded or unloaded, and such ship or vessel has a carrying capacity of 50 tons or greater, shall employ and supply upon every ship or vessel while being loaded or unloaded, a person over the age of 18 years to act as signalman or hatch-tender whose sole duty it shall be to observe the operations of loading or unloading of each working hatch on such ship or vessel, and to warn all persons engaged in the operation of loading or unloading of any possibility of injury to any of the articles of which the cargo is composed, or of danger to any person in or about the ship or vessel while it is being loaded or unloaded.

(Amended by Stats. 1971, Ch. 1748.)

7601. Handtrucks shall be maintained in a safe condition by the employer. Handles shall be maintained free of hazardous burrs, splinters, cracks or splits.

(Repealed and added by Stats. 1967, Ch. 398.)

7602. Handtools shall be kept in good condition and be safely stored by the employer. Unsafe handtools shall not be used.

(Repealed and added by Stats. 1967, Ch. 398.)

7603. The maximum weight of materials stored on building floors or load-carrying platforms, except those built directly on the ground, shall not exceed their safe carrying capacity.

Material, when stored, shall be piled, stacked, or racked in a manner designed to prevent it from tipping, falling, collapsing, rolling or spreading. Racks, bins, planks, sleepers, bars, strips, blocks, sheets, shall be used when necessary to make the piles stable.

(Repealed and added by Stats. 1967, Ch. 398.)

7604. Adequate and substantial bull rails, stringer rails or curbs shall be installed at the waterside of all flush aprons on such wharves, docks or piers as are in active service for movement of cargo therefrom to vessels. This section shall not apply to any pier designed with depressed spur tracks on at least one side, on which cargo is worked between rail cars and ships but not in the narrow wharf area between depressed tracks and pier edge.

(Repealed and added by Stats. 1967, Ch. 398.)

7605. The employer shall require that tools, machinery, gear and other equipment subject to wear be inspected at adequate intervals and unsafe conditions corrected. If tools, machinery, gear or equipment are found to be defective or otherwise unsafe, employees shall report the same to the person in charge of work who shall have it discarded, marked and so placed that it cannot be used again until made safe.

(Repealed and added by Stats. 1967, Ch. 398.)

7606. Every dock plate shall be constructed and maintained with strength sufficient to support the load carried thereon.

Dock plates shall be secured in position when spanning the space between the dock or the unloading platform and the vehicle. The dock plate, together with its securing devices, where used over spans of different lengths, shall be of such construction as will readily obtain rigid security over such spans.

The dock plates shall be so constructed and maintained that when they are secured in position the end edges of the plate shall be in substantial contact with dock or loading platform, and with the vehicle bed in such manner as to prevent rocking or sliding.

(Repealed and added by Stats. 1967, Ch. 398.)

7607. Internal combustion engine-driven equipment shall be operated inside of buildings or enclosed structures only when such operation does not result in harmful exposure to concentration of dangerous gases or fumes in excess of maximum acceptable concentrations. Exhaust pipes shall be installed in such a manner that the exhaust products shall be discharged so as not to be a hazard to the operators.

(Repealed and added by Stats. 1967, Ch. 398.)

7608. Any person who violates any provisions of this part is guilty of a misdemeanor.

(Added by renumbering Section 7601 by Stats. 1963, Ch. 928.)

7609. The provisions of Sections 7601 to 7607, inclusive, shall be applicable to longshore and stevedore operations.

(Repealed and added by Stats. 1967, Ch. 398.)

7611. Nothing in the foregoing sections of this part shall limit the authority of the division to prescribe or enforce general or special safety orders.

(Repealed and added by Stats. 1967, Ch. 398.)

Part 6. Tanks And Boilers

(Part 6 added by Stats. 1945, Ch. 1142.)

Chapter 1. Scope of Chapter and General Provisions

(Chapter 1 added by Stats. 1945, Ch. 1142.)

7620. "Division," as used in this part, means the Division of Occupational Safety and Health.

(Amended by Stats. 1980, Ch. 676.)

7621. "Boiler" as used in this part means any fired or unfired pressure vessel used to generate steam pressure by the application of heat subject to this part.

(Amended by Stats. 1949, Ch. 1530.)

7622. "Tank" as used in this part, means any unfired pressure vessel, subject to this part, used for the storage of air pressure or liquefied petroleum gases; provided, however, that for the purpose of shop inspection, "tank" shall mean any unfired pressure vessel built according to the rules of any nationally recognized pressure vessel code.

(Amended by Stats. 1949, Ch. 1530.)

7623. This part applies to all boilers and tanks which are not specifically exempted in this chapter, or by the general safety orders of the division now in effect or which may be hereafter adopted.

(Amended by Stats. 1949, Ch. 1530.)

7624. The following tanks are not subject to this part:

(a) Tanks under the jurisdiction or inspection of the United States government.

(b) Air pressure tanks used in household domestic services.

(c) Tanks of 11/2 cubic feet or less which are not subject to a pressure of more than 150 pounds per square inch.

(d) Air pressure tanks supplied with air by the same air compressor which supplies air for the brakes of any motor vehicle or streetcar, which units of transportation are operated by any person, firm, or corporation subject to the jurisdiction of the United States Department of Transportation or the California Highway Patrol.

(e) Tanks not subject to an internal or external pressure or more than 15 pounds per square inch, irrespective of size.

(Amended by Stats. 1970, Ch. 518.)

7625. The following steam boilers are not subject to this part:

(a) Boilers under the jurisdiction or inspection of the United States Government, and all other boilers operated by employers not subject to Division 4 of this code.

(b) Boilers on which the pressure does not exceed 15 pounds per square inch.

(c) Automobile boilers and boilers on road motor vehicles.

(Added by Stats. 1945, Ch. 1142.)

7626. This part does not limit the authority of the division to prescribe or enforce general or special safety orders.

(Added by Stats. 1945, Ch. 1142.)

Chapter 2. Administration

(Chapter 2 added by Stats. 1945, Ch. 1142.)

7650. Inspections required by this part shall be made either by qualified safety engineers employed by the division or by certified inspectors; provided, however, that shop inspections shall be made by the division, acting through its qualified safety engineers when request therefor is made by any manufacturer of tanks or boilers.

(a) As used in this chapter a "certified inspector" is one who is qualified to make inspections or examinations of boilers or tanks according to the rules under which the vessel is constructed, who has an unrevoked certificate of competency issued pursuant to this part, and who is employed by any one of the following:

(1) A county.

(2) A city.

(3) An insurer.

(4) An employer, for the purpose of inspecting only tanks and boilers under his jurisdiction.

(b) As used in this chapter a "qualified safety engineer" is one who is qualified to make inspections or examinations of boilers or tanks according to the rules under which the vessel is constructed. Such qualification is to be determined by a written examination prescribed by the division.

(Amended by Stats. 1949, Ch. 1530.)

7651. A certificate of competency may be obtained by application made to the division.

(Added by Stats. 1945, Ch. 1142.)

7652. The division may determine by examination the competency of an applicant for a certificate of competency.

(Added by Stats. 1945, Ch. 1142.)

7652.5. Notwithstanding any other provision of the law, a certified inspector employed by an insurer or by an employer for the purpose of inspecting only tanks and boilers under his jurisdiction need not be a citizen or an elector.

(Added by Stats. 1957, Ch. 1347.)

7653. Upon good cause being shown therefor, the division may revoke a certificate of competency.

(Added by Stats. 1945, Ch. 1142.)

7654. Where serious conditions are found by certified inspectors that would jeopardize the life, limb, or safety of employees, the reports of inspection shall be made forthwith to the division by telegraph or telephone within twenty-four hours.

Within twenty-one days after each routine inspection, every certified inspector shall forward a report of his inspection, on prescribed forms, to the division. His certificate of competency may be suspended or revoked by the division for failure to comply with this section.

(Amended by Stats. 1949, Ch. 1530.)

7655. The division shall prepare and adopt regulations in accordance with the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, designed to promote safety with respect to the installation and operation of vendor facilities for the storage and pumping of compressed or liquefied natural gas and liquefied petroleum gas into vehicles.

(Amended by Stats. 1983, Ch. 142, Sec. 119.)

Chapter 3. Operation of Tanks and Boilers

(Chapter 3 added by Stats. 1945, Ch. 1142.)

7680. No tank or boiler shall be operated unless a permit for its operation has been issued by or in behalf of the division.

(Amended by Stats. 1976, Ch. 467.)

7681. (a) The division shall inspect or cause to be inspected each installed tank at least every five years, except for any tank specified in subdivision (b).

(b) Any air pressure tank which contains 25 cubic feet or less and is not subject to pressure of more than 150 pounds per square inch and any liquefied petroleum gas tank used for storage, except a tank used for dispensing purposes as part of a dispensing unit, which contains 575 gallons or less shall be inspected or caused

to be inspected by the division when the tank is initially placed into service if the tank is constructed, inspected and stamped in compliance with the American Society of Mechanical Engineers (ASME) Code, or the design, material, and construction of the tank is approved by the division as equivalent to the ASME Code.

(c) "Dispensing unit," as used in this section, means a stationary liquefied petroleum gas installation, other than a bulk plant, from which a product is dispensed, for final utilization, into mobile fuel tanks or portable cylinders.

(Amended by Stats. 1987, Ch. 1216, Sec. 1.)

7682. The division shall inspect or cause to be inspected each installed fired boiler internally and externally at least every year, except that the division may grant extensions to permit the interval between internal inspections to be increased to a maximum interval of 36 months where operating experience and design of the boiler has demonstrated to the satisfaction of the division that equivalent safety will be maintained.

For other classes of boilers, the division shall establish internal inspection intervals which will ensure the safety of people working in the vicinity of the boiler. In determining the intervals, the division shall consider such factors as the design and construction of the boilers and the conditions under which they operate.

External inspection shall be made of all boilers at the time of the internal inspection and at any other intervals as are deemed necessary by the division acting through qualified safety engineers and certified inspectors.

(Amended by Stats. 1988, Ch. 684, Sec. 1.)

7683. (a) If a tank or boiler is found to be in a safe condition for operation, a permit shall be issued by or on behalf of the division for its operation.

(b) In the case of a tank, the permit shall continue in effect for not longer than five years, except for any tank specified in subdivision (b) of Section 7681.

(c) In the case of a tank specified in subdivision (b) of Section 7681, the permit shall remain in effect as long as the tank is in compliance with applicable provisions of this part and regulations contained in Title 8 of the California Administrative Code. A new inspection and permit for operation shall be required whenever there is a change in ownership and permanent location of the tank or there is an alteration or change in the tank which affects the tank's safety.

This subdivision applies to any permit in effect on the effective date of this subdivision as well as to any permit issued after such date. Notwithstanding any other provision of law, an insurer is not liable for any permit issued prior to the effective date of this subdivision for any tank specified in subdivision (b) of Section 7681 for any period of time exceeding the period for which the last permit was issued.

(d) In the case of a boiler, the permit shall continue in effect for a period which is not longer than one year.

(Amended by Stats. 1980, Ch. 1279.)

7684. Each permit or a clear reproduced copy thereof shall be posted in a protective container in a conspicuous place on or near the tank or boiler covered by it.

(Amended by Stats. 1985, Ch. 413, Sec. 2.)

7685. The division may issue and renew temporary permits for not to exceed 30 days each, pending the making of replacements or repairs.

(Added by Stats. 1945, Ch. 1142.)

7686. Upon good cause being shown therefor, and after notice and an opportunity to be heard, the division may revoke any permit.

(Added by Stats. 1945, Ch. 1142.)

7687. If the inspection shows a tank or boiler to be in an unsafe or dangerous condition, the division may issue a preliminary order requiring such repairs or alterations to be made to it as are necessary to render it safe, and may order its use discontinued until the repairs or alterations are made or the dangerous or unsafe condition is remedied.

(Added by Stats. 1945, Ch. 1142.)

7688. Unless the preliminary order is complied with, a hearing before the division shall be allowed, upon request, at which the owner, operator, or other person in charge of the tank or boiler may appear and show cause why he should not comply with the order.

(Added by Stats. 1945, Ch. 1142.)

7689. If it thereafter appears to the division that the tank or boiler is unsafe and that the requirements contained in the preliminary order should be complied with, or that other things should be done to make the tank or boiler safe, the division may order or confirm the withholding of the permit and may make such requirements as it deems proper for the repair or alteration of the tank or boiler, or the correction of the dangerous and unsafe conditions.

(Added by Stats. 1945, Ch. 1142.)

7690. The order may be reheard by the division, or reviewed by the courts, in the manner specified by this code for safety orders, and not otherwise.

(Added by Stats. 1945, Ch. 1142.)

7691. If the operation of a tank or boiler constitutes a serious menace to the life or safety of any person employed about it, the division or any of its safety engineers or any person affected thereby, may apply to the superior court of the county in which the tank or boiler is situated for an injunction restraining its operation until the condition has been corrected.

(Amended by Stats. 1949, Ch. 1530.)

7692. The certification of the division that no valid permit exists for the operation of a tank or boiler, and the affidavit of any safety engineer of the division that its operation constitutes a menace to the life or safety of any person employed about it, is sufficient proof to warrant the immediate granting of a temporary restraining order.

(Amended by Stats. 1949, Ch. 1530.)

Chapter 4. Inspection Fees

(Chapter 4 added by Stats. 1945, Ch. 1142.)

7720. The division shall not charge an inspection fee where an inspection is made by a certified inspector if the inspection has been made and reports have been submitted within the time limits specified in this part.

(Amended by Stats. 2016, Ch. 31, Sec. 220. Effective June 27, 2016.)

7721. (a) The division shall fix and collect fees for the shop, field, and resale inspection of tanks and boilers and for consultations, surveys, audits, and other activities required or related to national standards concerning the design or construction of boilers or pressure vessels or for evaluating fabricator's plant facilities when these services are requested of the division by entities desiring these services. The division shall fix and collect the fees for the inspection of pressure vessels by a division safety engineer. The division may charge an additional fee for necessary

subsequent inspections to determine if applicable safety orders have been complied with.

(b) The division shall charge a fee for processing a permit.

(c) The division shall fix and collect fees for field consultations regarding pressure vessels.

(d) Whenever a person owning or having the custody, management, or operation of a pressure vessel fails to pay the fees required under this chapter within 60 days after notification, he or she shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of the fee.

(e) Any fees required pursuant to this section shall be in amounts sufficient to cover the direct and indirect costs of the division for administering this part and shall be adopted as emergency regulations. These emergency regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These regulations shall become effective immediately upon filing with the Secretary of State.

(Amended by Stats. 2016, Ch. 31, Sec. 221. Effective June 27, 2016.)

7722. (a) The fees collected under this part shall be paid into the Pressure Vessel Account, which is hereby created, to be used for the administration of the division pressure vessel safety program.

(b) The division shall establish criteria upon which fee charges are based and prepare an annual report concerning revenues obtained and expenditures appropriated for the pressure vessel safety program. The division shall file the report with the Legislative Analyst, the Joint Legislative Audit Committee, and the Department of Finance.

(Amended by Stats. 2016, Ch. 31, Sec. 222. Effective June 27, 2016.)

7725. As used in this chapter, the following terms shall have the meaning therein given them.

(a) "Small tank" shall mean any tank 1,200 gallons water capacity or less.

(b) "Large tank" shall mean any tank of more than 1,200 gallons water capacity.

(c) "Shop inspection" shall mean the inspection and testing of tanks or boilers, manufactured, or in the process of manufacture, repair, or alteration, in the manufacturer's shops, or at the jobsite, in accordance with the applicable rules of the respective codes under which they are manufactured.

(d) "Field inspection" shall mean the inspection and testing of installed tanks or boilers or both tanks and boilers, regardless of location.

(e) "Resale inspection" shall mean the inspection of boilers or tanks in the possession of a dealer or vendor at the request of a user who contemplates the purchase thereof.

(Amended by Stats. 1976, Ch. 467.)

7726. All inspection fees shall be paid before the issuance of a permit.

(Added by renumbering Section 7723 by Stats. 1949, Ch. 1530.)

7728. Whenever an owner or user of any apparatus or equipment fails to pay the fees required under this chapter within 60 days after notification, said owner or user shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of such fee. For the purposes of this section, the date of the invoice shall be considered the date of notification.

(Added by Stats. 1965, Ch. 1191.)

Chapter 5. Offenses

(Chapter 5 added by Stats. 1945, Ch. 1142.)

7750. Except during the time that a request for a permit remains unacted upon, every person owning or having the custody, management, or operation of a tank or boiler who operates it without a permit issued pursuant to this part is guilty of a misdemeanor.

The operation of a tank or boiler without a permit constitutes a separate offense for each day that it is so operated.

(Added by Stats. 1945, Ch. 1142.)

Chapter 6. Mismanagement of Steam Boilers

(Chapter 6 added by Stats. 1945, Ch. 1142.)

7770. Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who wilfully, or from ignorance or from gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby human life is endangered, is guilty of a felony.

(Added by Stats. 1945, Ch. 1142.)

7771. Every person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, railroad, vessel, or other mechanical works, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is caused, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

(Amended by Stats. 2011, Ch. 15, Sec. 223. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

Part 7. Volatile Flammable Liquids

(Part 7 added by Stats. 1953, Ch. 922.)

7800. "Volatile flammable liquids" as used in this part means any petroleum or liquid product of petroleum or natural gas having a flash point below 100 degrees Fahrenheit, and includes any petroleum or liquid product of petroleum or natural gas while at a temperature above its flash point. Flash points shall be as determined by means of the Tag Closed Tester, Designation D56-36 American Society for Testing Materials, or the Pensky-Martens Closed Tester, Designation D93-42 American Society for Testing Materials.

(Added by Stats. 1953, Ch. 922.)

7801. "Occupational Safety and Health Standards Board" as used in this part means the Occupational Safety and Health Standards Board of the Division of Occupational Safety and Health, Department of Industrial Relations, State of California.

(Amended by Stats. 1980, Ch. 676.)

7802. The Occupational Safety and Health Standards Board shall adopt general orders pursuant to Section 6500, to make effective the provisions of this part.

(Amended by Stats. 1980, Ch. 676.)

7803. Every employer who engages in any business requiring any employee to handle or use any volatile flammable liquid or to work in the close proximity of any such liquid in sufficient quantity and under conditions affording opportunity for the person or clothing becoming ignited shall provide adequate

means of extinguishment whereby such employee may extinguish flames on his person or clothing.

(Added by Stats. 1953, Ch. 922.)

Part 7.5. Refinery And Chemical Plants

(Part 7.5 added by Stats. 1990, Ch. 1632, Sec. 1.)

Chapter 1. General

(Chapter 1 added by Stats. 1990, Ch. 1632, Sec. 1.)

7850. This part shall be known and cited as the California Refinery and Chemical Plant Worker Safety Act of 1990.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7851. The Legislature finds and declares that because of the potentially hazardous nature of handling large quantities of chemicals and recent disasters involving chemical handling in other states, a greater state effort is required to assure worker safety. The Legislature also recognizes that a key element for assuring workplace safety is adequate employee training. The potential consequences of explosions, fires, and releases of dangerous chemicals may be catastrophic; thus immediate and comprehensive government action must be taken to ensure that workers in petroleum refineries, chemical plants, and other related facilities are thoroughly trained and that adequate process safety management practices are implemented.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7852. (a) It is the intent of the Legislature, in enacting this part, that the Occupational Safety and Health Standards Board and the Division of Occupational Health and Safety (OSHA) promote worker safety through implementation of training and process safety management practices in petroleum refineries and chemical plants and other facilities deemed appropriate.

(b) To the maximum extent practicable, the board and the division shall minimize duplications with other state statutory programs and business reporting requirements when developing standards pursuant to Chapter 2 (commencing with Section 7855).

(c) It is further the intent of the Legislature, in enacting this part, that in the interest of promoting worker safety, standards be adopted by March 31, 2014.

(Amended by Stats. 2013, Ch. 28, Sec. 42. Effective June 27, 2013.)

7853. For the purposes of this part, "process safety management" means the application of management programs, which are not limited to engineering guidelines, when dealing with the risks associated with handling or working near hazardous chemicals. Process safety management is intended to prevent or minimize the consequences of catastrophic releases of acutely hazardous, flammable, or explosive chemicals.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

Chapter 2. Process Safety Management Standards

(Chapter 2 added by Stats. 1990, Ch. 1632, Sec. 1.)

7855. The purpose of this chapter is to prevent or minimize the consequences of catastrophic releases of toxic, flammable, or explosive chemicals. The establishment of process safety management standards are intended to eliminate, to a substantial degree, the risks to which workers are exposed in petroleum refineries, chemical plants, and other related manufacturing facilities.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7856. By March 31, 2014, the board shall adopt process safety management standards for refineries, chemical plants, and other manufacturing facilities, as specified in Codes 28 (Chemical and Allied Products) and 29 (Petroleum Refining and Related Industries) of the Manual of Standard Industrial Classification Codes, published by the United States Office of Management and Budget, 1987 Edition, that handle acutely hazardous material as defined in subdivision (a) of Section 25532 and subdivision (a) of Section 25536 of the Health and Safety Code and pose a significant likelihood of accident risk, as determined by the board. Alternately, upon making a finding that there is a significant likelihood of risk to employees at a facility not included in Codes 28 and 29 resulting from the presence of acutely hazardous materials or explosives as identified in Part 172 (commencing with Section 172.1) of Title 49 of the Code of Federal Regulations, the board may require that these facilities be subject to the jurisdiction of the standards provided for in this section. When adopting these standards, the board shall give priority to facilities and areas of facilities where the potential is greatest for preventing severe or catastrophic accidents because of the size or nature of the process or business. The standards adopted pursuant to this section shall require that injury prevention programs of employers subject to this part and implemented pursuant to Section 6401.7 include the requirements of this part.

(Amended by Stats. 2013, Ch. 28, Sec. 43. Effective June 27, 2013.)

7857. The process safety management standards shall include provisions dealing with the items prescribed by Sections 7858 to 7868, inclusive, of this chapter.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7858. The employer shall develop and maintain a compilation of written safety information to enable the employer and the employees operating the process to identify and understand the hazards posed by processes involving acutely hazardous and flammable material. The employer shall provide for employee participation in this process. This safety information shall be communicated to employees involved in the processes, and shall include information pertaining to hazards of acutely hazardous and flammable materials used in the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. A copy of this information and communication shall be accessible to all workers who perform any duties in or near the process area.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7859. The employer shall perform a hazard analysis for identifying, evaluating, and controlling hazards involved in the process. The employer shall provide for the participation of knowledgeable operating employees in these analyses. The final report containing the results of the hazardous analysis for each process shall be available, in the respective work area, for review by any person working in that area. Upon request of any worker or any labor union representative of any worker in the area, the employer shall provide or make available a copy of any risk management prevention program prepared for that facility pursuant to Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code. The board, when adopting a standard or standards pertaining to this section, may authorize employers to submit risk management prevention programs prepared pursuant to Article 2 (commencing with Section 25531) of Chapter 6.95 of Division 20 of the Health and Safety Code to satisfy related requirements in whole or in part.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7860. (a) The employer shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each process consistent with the process safety information.

(b) A copy of the operating procedures shall be readily accessible to employees or to any other person who works in or near the process area.

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to facilities.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7861. (a) Each employee whose primary duties include the operating or maintenance of a process, and each employee prior to assuming operations and maintenance duties in a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in Section 7860. The training shall include emphasis on the specific safety and health hazards, procedures, and safe practices applicable to the employee's job tasks.

(b) Refresher and supplemental training shall be provided to each operating or maintenance employee, or both, and other worker necessary to ensure safe operation of the facility and on a recurring regular schedule as determined adequate by the board.

(c) The employer shall ensure that each worker necessary to ensure safe operation of the facility has received and successfully completed training as specified by this section. The employer, after the initial or refresher training shall prepare a certification record which contains the identity of the employee, the date of training, and the signature of the person conducting the training. Testing procedures shall be established by each employer to ensure competency in job skill levels and safe and healthy work practices.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7862. (a) The employer shall inform contractors performing work on, or near, a process of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process, and require that contractors have trained their employees to a level adequate to safely perform their job. The employer shall also inform contractors of any applicable safety rules of the facility, and assure that the contractors have so informed their employees.

(b) The employer shall explain to contractors the applicable provisions of the emergency action plan required by Section 7868.

(c) Contractors shall assure that their employees have received training to safely perform their jobs and that these employees will adhere to all applicable work practices and safety rules of the facility.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7863. The employer shall perform a prestartup safety review for new facilities and for modified facilities for which the modification necessitates a change in the process safety information. These reviews shall include knowledgeable operating employees.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7864. The employer shall establish and implement written procedures and inspection and testing programs to maintain the ongoing integrity of process equipment. These programs shall include a process for allowing employees to identify and report potentially faulty or unsafe equipment, and to record their observations and suggestions in writing. The employer shall respond regarding the disposition of the employee's concerns contained in the reports in a timely manner.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7865. The employer shall develop and implement a written procedure governing the issuance of "hot work" permits. "Hot work" includes electric or gas welding, cutting, brazing, or similar flame- or spark-producing operations.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7866. The employer shall establish and implement written procedures to manage changes, except for replacements in kind, to process chemicals, technology, and equipment, and to make changes to facilities.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7867. The employer shall establish a written procedure for investigating every incident which results in, or, as determined by board criteria, could reasonably have resulted in, a major accident in the workplace. The procedure shall, at a minimum, require that a written report be prepared and be provided to all employees whose work assignments are within the facility where the incident occurred at the time the incident occurred and shall also include establishing a method for dealing with findings and recommendations.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7868. The employer shall establish and implement an emergency action plan. The employer may use the business plan for emergency response submitted pursuant to subdivision (a) of Section 25503.5 and subdivision (b) of Section 25505 of the Health and Safety Code if it meets the standards adopted by the board.

(Added by Stats. 1990, Ch. 1632, Sec. 1.)

7870. Notwithstanding the availability of federal funds to carry out the purposes of this part, the division shall annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other duties conducted pursuant to this part. The fees shall be adopted by March 31, 2014. All revenue collected from these fees shall be deposited into the Occupational Safety and Health Fund. The fees shall be sufficient to support, at a minimum, the annual cost of 15 positions. The expenditure of these funds shall be subject to appropriation by the Legislature in the annual Budget Act or other measure.

(Amended by Stats. 2013, Ch. 28, Sec. 44. Effective June 27, 2013.)

7872. (a) As used in this section and in Section 7873, "turnaround" means a planned, periodic shutdown, total or partial, of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment. "Turnaround" does not include unplanned shutdowns that occur due to emergencies or other unexpected maintenance matters in a process unit or plant. "Turnaround" also does not include routine maintenance, where routine maintenance consists of regular, periodic maintenance on one or more pieces of equipment at a refinery process unit or plant that may require shutdown of such equipment.

(b) Every September 15, every petroleum refinery employer shall submit to the division a full schedule of planned turnarounds for all affected units for the following calendar year.

(c) At the request of the division, at least 60 days prior to the shutdown of a process unit or plant as part of a planned turnaround, a petroleum refinery employer shall provide access onsite and allow the division to review the following documentation for the process unit or plant scheduled to be shut down for that turnaround:

(1) All corrosion reports and risk-based inspection reports generated since the last turnaround.

(2) Process hazard analyses generated since the last turnaround.

(3) Boiler permit schedules.

(4) All management of change records related to repairs, design modifications, and process changes implemented since the last turnaround or scheduled to be completed in the planned turnaround referenced in this subdivision and identified in subdivision (b).

(5) Work orders scheduled to be completed in the planned turnaround referenced in this subdivision and identified in subdivision (b).

(6) All temporary repairs made since the last turnaround, including, but not limited to, clamps and encapsulations. As used in this section, "temporary repairs" means repairs made to piping systems in order to restore sufficient integrity to continue safe operation until permanent repairs can be scheduled.

(7) Notification and description of all repairs, design modifications, or process changes described in a corrosion report, risk-based inspection report, process hazard analysis, boiler permit schedule, management of change record, work order, or other document listed in paragraphs (1) to (6), inclusive, that the petroleum refinery employer has deferred to a subsequent operational period or turnaround.

(d) The division may request additional information as necessary to perform its responsibilities in this part pursuant to Section 6314.

(e) At the request of the division, at least 30 days before the shutdown of a process unit or plant as part of a planned turnaround, a petroleum refinery employer shall provide access onsite and allow the division to review any changes to the information or documents reviewed by the division pursuant to subdivision (c) and relevant supporting documents.

(f) At the division's request, a petroleum refinery employer shall provide the division with physical copies, or, at the division's discretion, electronic copies if available, of the documentation reviewed by the division pursuant to subdivisions (c), (d), and (e).

(g) By agreement with a petroleum refinery employer, the division may modify the reporting period as to any individual item of information.

(h) This section is not intended to limit or increase the division's authority in Part 1 (commencing with Section 6300) to prohibit use of a place of employment, machine, device, apparatus, or equipment or any part thereof that constitutes an imminent hazard to employees.

(i) The Legislature finds and declares that the purpose of this section is to improve the ability of the state to conduct inspections of petroleum refining operations.

(Added by Stats. 2014, Ch. 519, Sec. 1. Effective January 1, 2015.)

7873. (a) As used in this section, "trade secret" means a trade secret as defined in subdivision (d) of Section 6254.7 of the Government Code or Section 1061 of the Evidence Code, and shall include the schedule submitted to the division pursuant to subdivision (b) of Section 7872 of this code, and the scheduling, duration, layout, configuration, and type of work to be performed during a turnaround. Upon completion of a turnaround, the scheduling and duration of that turnaround shall no longer be considered a trade secret. The wages, hours, benefits, job classifications, and training standards for employees performing work for petroleum refinery employers is not a trade secret.

(b) (1) If a petroleum refinery employer believes that information submitted to the division pursuant to Section 7872 may involve the release of a trade secret, the petroleum refinery employer shall nevertheless provide this information to the division. The petroleum refinery employer may, at the time of submission, identify all or a portion of the information submitted to the division as trade secret and, to the extent feasible, segregate records designated as trade secret from the other records.

(2) Subject to subdivisions (c), (d), and (g), the division shall not release to the public any information designated as a trade secret by the petroleum refinery employer pursuant to paragraph (1).

(c) (1) Upon the receipt of a request for the release of information to the public that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision (b), the division shall notify the petroleum refinery employer in writing of the request by certified mail, return receipt requested.

(2) The division shall release the requested information to the public, unless both of the following occur:

(A) Within 30 days of receipt of the notice of the request for information, the petroleum refinery employer files an action in an appropriate court for a declaratory judgment that the information is subject to protection as a trade secret, as defined in subdivision (a), and promptly notifies the division of that action.

(B) Within 120 days of receipt of the notice of the request for information, the petroleum refinery employer obtains an order prohibiting disclosure of the information to the public and promptly notifies the division of that action.

(3) This subdivision shall not be construed to allow a petroleum refinery employer to refuse to disclose the information required pursuant to this section to the division.

(d) Except as provided in subdivision (c), any information that has been designated as a trade secret by a petroleum refinery employer shall not be released to any member of the public, except that such information may be disclosed to other officers or employees of the division when relevant in any proceeding of the division.

(e) (1) The petroleum refinery employer filing an action pursuant to paragraph (2) of subdivision (c) shall provide notice of the action to the person requesting the release of the information at the same time that the defendant in the action is served.

(2) A person who has requested the release of information that includes information that the petroleum refinery employer has notified the division is a trade secret pursuant to paragraph (1) of subdivision (b) may intervene in an action by the petroleum refinery employer filed pursuant to paragraph (2) of subdivision (c). The court shall permit that person to intervene.

(f) The public agency shall not bear the court costs for any party named in litigation filed pursuant to this section.

(g) This section shall not be construed to prohibit the exchange of trade secrets between local, state, or federal public agencies or state officials when those trade secrets are relevant and reasonably necessary to the exercise of their authority.

(h) If the person requesting the release of information identified by a petroleum refinery employer as a trade secret files an action against the division to order disclosure of that information, the division shall promptly notify the petroleum refinery employer in writing of the action by certified mail, return receipt requested. The petroleum refinery employer may intervene in an action filed by the person requesting the release of trade secrets identified by the petroleum refinery employer. The court shall permit the petroleum refinery employer to intervene.

(i) An officer or employee of the division who, by virtue of that employment or official position, has possession of, or has access to, trade secret information, and who, knowing that disclosure

of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to a person he or she knows is not entitled to receive it, is guilty of a misdemeanor. A contractor with the division and an employee of the contractor, who has been furnished information as authorized by this section, shall be considered an employee of the division for purposes of this section.

(Amended by Stats. 2015, Ch. 314, Sec. 1. Effective January 1, 2016.)

Part 8. Amusement Rides Safety Law

(Part 8 added by Stats. 1968, Ch. 1113.)

7900. This part shall be known and may be cited as the Amusement Rides Safety Law.

(Added by Stats. 1968, Ch. 1113.)

7901. As used in this part:

(a) "Amusement ride" means a mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Amusement ride" includes the business of operating bungee jumping services or providing services to facilitate bungee jumping, but does not include slides, playground equipment, coin-operated devices or conveyances which operate directly on the ground or on the surface or pavement directly on the ground or the operation of amusement devices of a permanent nature. The division shall determine the specific devices which are amusement rides for the purposes of this part. This determination shall be made to apply equally to all operators of similar or identical rides and shall be made pursuant to a procedure promulgated by the standards board.

(b) "Operator" or "owner" means a person who owns or controls or has the duty to control the operation of an amusement ride. It includes the state and every state agency, and each county, city, district, and all public and quasi-public corporations and public agencies therein.

(c) "Permit" means a document issued by the division which indicates that an inspection of the ride has been performed pursuant to rules and regulations adopted by the division.

(Amended by Stats. 1992, Ch. 520, Sec. 1. Effective January 1, 1993.)

7902. The division shall promulgate and formulate rules and regulations for adoption by the Occupational Safety and Health Standards Board for the safe installation, repair, maintenance, use, operation, and inspection of all amusement rides as the division finds necessary for the protection of the general public using amusement rides. The rules and regulations shall be in addition to the existing applicable safety orders and will be concerned with engineering force stresses, safety devices, and preventative maintenance. Nothing in this chapter shall limit the authority of the division to prescribe or enforce general or special safety orders.

(Amended by Stats. 1983, Ch. 705, Sec. 2.)

7903. The division or a public entity shall not issue the original certificate of inspection for an amusement ride until it receives certification in writing by an engineer qualified under the Civil and Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code) that such amusement ride meets the requirements established by the division for amusement rides.

(Added by Stats. 1968, Ch. 1113.)

7904. (a) The division shall fix and collect all fees necessary to cover the cost of administering this part. Fees shall be charged to a person or entity receiving the division's services as provided by this part, as set out in regulations adopted pursuant to this part, including, but not limited to, approvals, determinations, permits, investigations, inspections and reinspections, certifications and recertifications, receipt and review of certificates, and reports and inspections. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this part. All fees collected by the division under this section shall be deposited into the Occupational Safety and Health Fund to support the division's portable amusement ride inspection program.

(b) Any fees required pursuant to this section shall be set forth in regulations. For the 2016–17 fiscal year, those regulations shall be adopted as emergency regulations. These emergency regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the rulemaking provisions of the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These emergency regulations shall become effective immediately upon filing with the Secretary of State.

(c) The division shall annually prepare and post on its Internet Web site a report summarizing all inspections of amusement rides and accidents occurring on amusement rides. This report may contain route location information submitted to the division by permit applicants.

(Amended by Stats. 2016, Ch. 31, Sec. 223. Effective June 27, 2016.)

7905. The division may hire inspectors to inspect amusement rides. The division shall cause the inspection provided by this part to be made by its safety inspectors, or by a qualified inspector who is approved by the division and employed by an insurance company or a public entity.

(Amended by Stats. 1983, Ch. 705, Sec. 5.)

7906. No person shall operate an amusement ride without a permit issued by the division or a public entity. On or before March 1 of each year an operator shall apply for a permit to the division or a public entity on a form furnished by the division and containing such information as the division may require. Each application shall specifically include a route list for the ride for the permit year, which shall include the name of each town or city, street location, and dates of operation of the ride at each location. A route list may be revised at any time, but a ride may not be operated at a particular location unless notification of the revision has been given previously to the division or public entity issuing the permit.

All amusement rides shall be inspected before they are originally put into operation for the public's use and thereafter at least once every year, unless authorized to operate on a temporary permit. Amusement rides may also be inspected each time they are disassembled and reassembled.

(Amended by Stats. 1983, Ch. 705, Sec. 6.)

7907. If, after inspection, an amusement ride is found to comply with the rules and regulations of the division, the division or a public entity shall issue a permit to operate.

(Added by Stats. 1968, Ch. 1113.)

7908. Before a new amusement ride is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification, or capacity of any amusement ride, the operator shall file with the division or a public entity a notice of his intention and any plans or diagrams requested by the division.

(Added by Stats. 1968, Ch. 1113.)

7909. The division may order cessation of operation of an amusement ride and permit revocation if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until such conditions are corrected to the satisfaction of the division

(Amended by Stats. 1983, Ch. 705, Sec. 7.)

7910. This part shall not be construed to prevent the use of any existing installation which upon inspection is found to be in a safe condition and in conformance with the rules and regulations of the division.

(Added by Stats. 1968, Ch. 1113.)

7911. If there are practical difficulties or unnecessary hardships for an operator to comply with the rules and regulations under this part, the division may modify the application of such rules or regulations if the spirit of the rules and regulations shall be observed and the public safety is secure. Any operator may make a written request to the division stating his grounds and applying for such modification. Any authorization by the division shall be in writing and shall describe the conditions under which the modifications are permitted. A record of all modifications shall be kept in the division and open to the public.

(Added by Stats. 1968, Ch. 1113.)

7912. No person shall operate an amusement ride unless there is in existence and on file with the division a policy of insurance, issued by a company licensed by the Department of Insurance to do business in the state, or by a nonadmitted insurer employed by a surplus lines broker licensed by the Department of Insurance, in an amount of not less than five hundred thousand dollars ($500,000) until January 1, 2009, and, effective on and after January 1, 2009, one million dollars ($1,000,000) per occurrence insuring the owner or operator against liability for injury suffered by persons riding the amusement ride.

(Amended by Stats. 2007, Ch. 478, Sec. 1. Effective January 1, 2008.)

7913. Nothing contained in this part shall prevent cities, counties, and cities and counties from regulating carnivals or amusement rides, nor prevent them from enacting legislation more restrictive than this part with respect to carnivals or amusement rides.

(Added by Stats. 1968, Ch. 1113.)

7914. (a) An operator of an amusement ride shall report or cause to be reported to the division immediately by telephone each known incident where the maintenance, operation, or use of the amusement ride results in any of the following:

(1) A fatality.

(2) A loss of consciousness or other injury to a person which requires medical service other than ordinary first aid treatment.

(3) Major mechanical failure. For purposes of this section, "major mechanical failure" means the stoppage of operation resulting from or in a structural failure, a mechanical or electrical failure of a drive or control system component, or a failure of a restraint system that significantly compromises ride safety. "Major mechanical failure" does not include a foreseeable malfunction that activates a safety system.

(4) A patron falling from a moving ride or from a ride that has temporarily stopped in an elevated position.

(b) If a fatality, reportable injury, or major mechanical failure, as defined in subdivision (a),is caused by the failure, malfunction, or operation of an amusement ride, the equipment or conditions that caused the accident shall be preserved for the purpose of investigation by the division.

(c) In addition to the report by telephone required under subdivision (a), an operator of an amusement ride shall submit a written accident report to the division within 24 hours of an incident on a form designated by the division.

(d) A division inspector may inspect an amusement ride upon receipt of the report of an incident.

(e) Whenever a state, county, or local fire or police agency is called to an accident involving an amusement ride covered by this part in which a serious injury or illness, or death occurs, the nearest office of the division shall be notified by telephone immediately by the responding agency.

(Amended by Stats. 2007, Ch. 478, Sec. 2. Effective January 1, 2008.)

7915. (a) Any owner or operator of any amusement ride who fails to comply with any provision of this part or any rule, regulation, or safety order adopted pursuant to this part shall be guilty of a misdemeanor.

(b) Whenever an owner or operator of any amusement ride fails to pay any fee required under Section 7904 within 60 days after notification, the owner or operator shall pay, in addition to the fee required, a penalty fee equal to 100 percent of the required fee. For purposes of this section, the date of the invoice shall be considered the date of notification.

(c) The division shall not issue any permit to any owner or operator of any amusement ride who fails to pay any fee until the fee is paid.

(Amended by Stats. 2007, Ch. 478, Sec. 3. Effective January 1, 2008.)

7916. (a) An owner of an amusement ride shall provide training for its employees in the safe operation and maintenance of amusement rides, as required by Sections 4, 6, 7, and 8 of ASTM F770-06, Standard Practice for Ownership and Operation of Amusement Rides and Devices, adopted by the American Society for Testing and Materials, as amended or as may be amended from time to time and as the division deems appropriate, and the injury prevention program required under Section 6401.7.

(b) The owner of an amusement ride shall maintain all of the records necessary to demonstrate that the requirements of subdivision (a) have been met, including employee training records and maintenance, repair, inspection, and injury and illness records for each amusement ride, as specified in ASTM F770-06 referenced in subdivision (a). On and after January 1, 2009, the owner of an amusement ride shall make the records available to a division inspector upon request.

(Added by Stats. 2007, Ch. 478, Sec. 4. Effective January 1, 2008.)

7917. If the division determines that an owner or operator of an amusement ride subject to this part has willfully or intentionally violated this part or a rule or regulation promulgated under this part, and that the violation resulted in a death or reportable injury as specified in Section 7914, the division shall impose on that owner or operator a civil penalty of not less than five thousand dollars ($5,000) and not more than twenty-five thousand dollars ($25,000).

(Added by Stats. 2007, Ch. 478, Sec. 5. Effective January 1, 2008.)

7918. The division shall enforce this part by the issuance of a citation and notice of civil penalty in a manner consistent with that specified in Section 6317 or in some other manner as deemed appropriate by the division. An owner or operator who receives a citation and penalty may appeal the citation and penalty to the Occupational Safety and Health Appeals Board in a manner consistent with that specified in Section 6319.

(Added by Stats. 2007, Ch. 478, Sec. 6. Effective January 1, 2008.)

7919. The division shall adopt rules and regulations necessary for the administration of this part, including, the reporting requirements established under Section 7914.

(Added by Stats. 2007, Ch. 478, Sec. 7. Effective January 1, 2008.)

Part 8.1. Permanent Amusement Ride Safety Inspection Program

(Part 8.1 added by Stats. 1999, Ch. 585, Sec. 1.)

7920. It is the intent of the Legislature in enacting this part to create a state system for the inspection of permanent amusement rides. This part shall be known and may be cited as the Permanent Amusement Ride Safety Inspection Program.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7921. As used in this part:

(a) "Permanent amusement ride" means a mechanical device, aquatic device, or combination of devices, of a permanent nature that carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. "Permanent amusement ride" includes the business of operating bungee jumping services or providing services to facilitate bungee jumping, but does not include slides, playground equipment, coin-operated devices or conveyances that operate directly on the ground or on a surface or pavement directly on the ground. The division shall determine the specific devices that are permanent amusement rides for the purposes of this part. This determination shall be made to apply equally to all operators of similar or identical rides and shall be made pursuant to a procedure promulgated by the standards board.

(b) "Operator" or "owner" means a person who owns or controls or has the duty to control the operation of an amusement ride. It includes the state and every state agency, and each county, city, district, and all public and quasi-public corporations and public agencies therein.

(c) "Qualified safety inspector" means either of the following:

(1) A person who holds a valid professional engineer license issued by this state or issued by an equivalent licensing body in another state, and who has been approved by the division as a qualified safety inspector for permanent amusement rides.

(2) A person who documents to the satisfaction of the division that he or she meets all of the following requirements:

(A) The person has a minimum of five years experience in the amusement ride field, at least two years of which were involved in actual amusement ride inspection with a manufacturer, government agency, amusement park, carnival, or insurance underwriter.

(B) The person completes not less than 15 hours per year of continuing education at a school approved by the division, which education shall include inservice industry or manufacturer updates and seminars.

(C) The person has completed at least 80 hours of formal education during the past five years from a school approved by the division for amusement ride safety. Nondestructive-testing training, as determined by the division, may be substituted for up to one-half of the 80 hours of education.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7922. This part does not apply to any of the following:

(a) Any playground operated by a school or local government if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement.

(b) Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

(c) Skating rinks, arcades, laser or paint ball war games, indoor interactive arcade games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, air boats, helicopters, airplanes, parasails, hot air balloons, whether tethered or untethered, theaters, amphitheaters, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, slide shows, live animal rides, or live animal shows.

(d) Permanent amusement rides operated at a private event that are not open to the general public and not subject to a separate admission charge.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7923. (a) The division shall formulate and propose rules and regulations for adoption by the Occupational Safety and Health Standards Board for the safe installation, repair, maintenance, use, operation, and inspection of all permanent amusement rides as the division finds necessary for the protection of the general public using permanent amusement rides. The rules and regulations shall be in addition to the existing applicable safety orders and will be concerned with engineering force stresses, safety devices, and preventative maintenance. Nothing in this part shall limit the authority of the division to prescribe or enforce general or special safety orders.

(b) It is the Legislature's intent that the rules and regulations adopted pursuant to this part be consistent with those adopted by the Occupational Safety and Health Standards Board for traveling amusement rides, to the extent that those rules and regulations are found to be appropriate.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7924. (a) On an annual basis, an owner of a permanent amusement ride shall submit to the division a certificate of compliance on a form prescribed by the division, which shall include the following:

(1) The legal name and address of the owner and his or her representative, if any, and the primary place of business of the owner.

(2) A description of, the name of the manufacturer of, and, if given by the manufacturer, the serial number and model number of, the permanent amusement ride.

(3) A written declaration, executed by a qualified safety inspector, stating that, within the preceding 12-month period, the permanent amusement ride was inspected by the qualified safety inspector and that the permanent amusement ride is in material conformance with this section and all applicable rules and regulations adopted by the division and standards board.

(b) The owner of multiple permanent amusement rides at a single site may submit a single certificate of compliance that provides the information required by subdivision (a) for each permanent amusement ride at that site.

(c) A certificate of compliance shall not be required until one year following the promulgation of any rules or regulations by the division governing the submission of the certificates.

(d) A person shall not operate a permanent amusement ride that was inspected by a qualified safety inspector or division inspector and found to be unsafe unless all necessary repairs or modifications, or both, to the ride have been completed and certified as completed by a qualified safety inspector.

(e) For the purposes of satisfying this section, a qualified safety inspector shall meet the requirements in subdivision (c) of Section 7921 and shall be certified by the division. A qualified safety inspector shall be recertified every two years following

his or her initial certification. A qualified safety inspector may be an in-house, full-time safety inspector of the owner of the permanent amusement ride, an employee or agent of the insurance underwriter or insurance broker of the permanent amusement ride, an employee or agent of the manufacturer of the amusement ride, or an independent consultant or contractor.

(f) The owner of a permanent amusement ride shall maintain all of the records necessary to demonstrate that the requirements of this section have been met, including, but not limited to, employee training records, maintenance, repair, and inspection records for each permanent amusement ride, and records of accidents of which the operator has knowledge, that resulted from the failure, malfunction, or operation of a permanent amusement ride and that required medical service other than ordinary first aid, and shall make those records available to a division inspector upon request. The owner shall make those records available for inspection by the division during normal business hours at the owner's permanent place of business. The owner or representative of the owner may be present when the division inspects the records. The division shall conduct an inspection of the operation of each ride at the permanent amusement park in conjunction with an inspection of records conducted pursuant to this subdivision, except that the division is not required to conduct an operational inspection of a ride pursuant to this subdivision if a qualified safety inspector employed by the division has already inspected the operation of that ride in connection with the execution of the current annual certificate of compliance pursuant to subdivision (a).

(g) Upon receipt of a certificate of compliance, the division shall notify the owner of the permanent amusement ride or rides for which a certificate is submitted whether the certificate meets all the requirements of this section, and if not, what requirements must still be met.

(h) The division shall, in addition to the annual inspection performed by the division pursuant to subdivision (f), inspect the records for a permanent amusement ride or the ride, or both, under either of the following circumstances:

(1) The division finds that the certificate of compliance submitted pursuant to this section for the ride is fraudulent.

(2) The division determines, pursuant to regulations it has adopted, that a permanent amusement ride has a disproportionately high incidence of accidents required to be reported pursuant to Section 7925.

(i) The division shall conduct its inspections with the least disruption to the normal operation of the permanent park.

(Amended by Stats. 2016, Ch. 31, Sec. 224. Effective June 27, 2016.)

7925. (a) Each operator of a permanent amusement ride shall report or cause to be reported to the division immediately by telephone each known accident where maintenance, operation, or use of the permanent amusement ride results in a death or serious injury to any person unless the injury does not require medical service other than ordinary first aid. If a death or serious injury results from the failure, malfunction, or operation of a permanent amusement ride, the equipment or conditions that caused the accident shall be preserved for the purpose of an investigation by the division.

(b) A division inspector may inspect any permanent amusement ride after the report of an accident to the division. The division may order a cessation of operation of a permanent amusement ride if it is determined after inspection to be hazardous or unsafe. Operation shall not resume until these conditions are corrected to the satisfaction of the division.

(c) Whenever a state, county, or local fire or police agency is called to an accident involving a permanent amusement ride covered by this part where a serious injury or death occurs, the nearest office of the division shall be notified by telephone immediately by the responding agency.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7926. (a) A person may operate a permanent amusement ride only if, at the time of operation, one of the following is in existence:

(1) The owner of the permanent amusement ride provides an insurance policy in an amount not less than one million dollars ($1,000,000) per occurrence insuring the owner or operator against liability for injury or death to persons arising out of the use of the permanent amusement ride.

(2) The owner of the permanent amusement ride provides a bond in an amount not less than one million dollars ($1,000,000), except that the aggregate liability of the surety under that bond shall not exceed the face amount of the bond.

(3) The owner of a permanent amusement ride meets a financial test of self-insurance, as prescribed by rules and regulations promulgated by the division, to demonstrate financial responsibility covering liability for injury suffered by patrons riding the permanent amusement ride.

(b) The insurance policy or bond shall be obtained from one or more insurers or sureties licensed by the Department of Insurance to do business in this state, or by a nonadmitted insurer employed by a surplus lines broker licensed by the Department of Insurance.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7927. Each owner of a permanent amusement ride shall provide training for its employees in the safe operation and maintenance of amusement rides, as required by the standards adopted by the American Society for Testing Materials, Committee F770-03, Section 4.1.3, and Committee F853-93, Section 6.2, as amended or as may be amended from time to time, and the injury prevention program required under Section 6401.7.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7928. The division shall adopt rules and regulations necessary for the administration of this part. The division may employ qualified safety inspectors as necessary for the purposes of this part.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7929. (a) The division shall fix and collect all fees necessary to cover the cost to the division of administering this part. Fees shall be charged to a person or entity receiving the division's services as provided by this part, as set out in regulations adopted pursuant to this part, including, but not limited to, approvals, determinations, certifications and recertifications, receipt and review of certificates, and inspections. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this part. Notwithstanding Section 6103 of the Government Code, the division may collect these fees from the state or any county, city, district, or other political subdivision.

(b) All fees collected pursuant to this section shall be deposited into the Occupational Safety and Health Fund to support the Permanent Amusement Ride Safety Inspection Program.

(c) Whenever a person owning or having custody, management, or operation of a permanent amusement ride fails to pay any fee required under this part within 60 days after the date of notification by the division, the division shall assess a penalty equal to 100 percent of the initial fee. For purposes of this section,

the date of the invoice fixing the fee shall be considered the date of notification.

(Amended by Stats. 2016, Ch. 31, Sec. 225. Effective June 27, 2016.)

7930. If the division determines that any owner or operator of a permanent amusement ride subject to this part has willfully or intentionally violated this part or any rule or regulation promulgated under this part, and that violation results in a death or serious injury as specified in Section 7925, the division shall impose on that owner or operator a civil penalty of not less than twenty-five thousand dollars ($25,000) and not more than seventy thousand dollars ($70,000).

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7931. The division shall enforce this part by the issuance of a citation and notice of civil penalty in a manner consistent with Section 6317. Any owner or operator who receives a citation and penalty may appeal the citation and penalty to the Occupational Safety and Health Appeals Board in a manner consistent with Section 6319.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

7932. (a) The provisions of this part relating to annual division inspections shall not apply to any permanent amusement ride located within a county or other political subdivision of the state that, as of April 1, 1998, has adopted the provisions of Chapter 66 (commencing with Section 6601.1) of the 1994 Uniform Building Code providing for the routine inspection of permanent amusement rides by the county or other political subdivision of the state, provided that the division determines that these inspections meet or exceed the inspection standards set forth in this part.

(b) If the county or other political subdivision suspends, revokes, or otherwise vacates its standards for permanent amusement rides, any permanent amusement ride located within the county or other political subdivision shall be subject to the inspection standards set forth in this part.

(Added by Stats. 1999, Ch. 585, Sec. 1. Effective January 1, 2000.)

Part 9. Tunnel And Mine Safety

(Part 9 added by Stats. 1972, Ch. 1430.)

Chapter 1. Tunnels and Mines

(Chapter 1 added by Stats. 1972, Ch. 1430.)

7950. This part shall be known and may be cited as "The Tom Carrell Memorial Tunnel and Mine Safety Act of 1972."

(Added by Stats. 1972, Ch. 1430.)

7951. As used in this part:

(a) Tunnel shall include excavation, construction, alteration, repairing, renovating, or demolishing of any tunnel except tunnel work covered under the compressed air safety orders adopted by the Occupational Safety and Health Standards Board and manhole construction.

(b) "Tunnel" means an underground passageway, excavated by men and equipment working below the earth's surface, that provides a subterranean route along which men, equipment, or substances can move.

(c) "Mine" means any excavation or opening above or below ground used for removal of ore, minerals, gravel, sand, rock, or other materials intended for manufacturing or sale. It shall include quarries and open pit operations, other than a gravel pit or other pit where material is removed by a contractor or other person for his own use and not for sale to others. The term "mine" shall not include a mine that is operated exclusively by persons having a proprietary interest in such mine or by persons who are paid only a share of the profits from the mine, nor shall it include during any calendar year, any mine that produced less than five thousand dollars ($5,000) in ore, minerals, sand, rock, or other material during the preceding calendar year.

(d) "Access shaft" means a vertical shaft used as a regular means of worker access to underground mines and tunnels under construction, renovation, or demolition.

(e) "Lower explosive limit" means the lowest concentration at which a gas or vapor can be ignited or will explode.

(f) "Face" means the head of the tunnel where soil is being removed, or that area in a mine where digging is underway.

(g) "Muck" means excavated dirt, rock, or other material.

(h) "Permissible equipment" means equipment tested and approved by the U.S. Bureau of Mines or acceptable to other authorities recognized by the division, and acceptable by the division, which is safe for use in gassy or extrahazardous tunnels or underground mines.

(i) "Division" means the Division of Occupational Safety and Health.

(j) "Board" means the Occupational Safety and Health Standards Board.

(k) "Underground mine" means a mine that consists of a subterranean excavation.

(Amended by Stats. 1980, Ch. 676.)

7952. There shall be within the division a separate unit of safety engineers trained to inspect all tunnel construction and mine operations.

(Added by Stats. 1972, Ch. 1430.)

7953. Sufficient manpower shall be maintained to provide for four annual inspections of underground mines, one inspection of surface mines or quarries annually, and six inspections of tunnels under construction annually.

(Added by Stats. 1972, Ch. 1430.)

7954. To assist the unit of safety engineers in determining the safety of tunnel construction and mine operation, the division shall make available at least one industrial hygiene engineer and one chemist. A laboratory for analysis of dust, gas, vapors, soil, or other materials shall be available to members of this unit. Contracts to provide for geological and other services may be signed by the division whenever it is necessary to assure safety for employees engaged in mining or tunnel work.

(Added by Stats. 1972, Ch. 1430.)

7955. The division and the owner of a mine, if he is not the operator of the mine, shall be notified before any initial mining operation or construction may be started at any mines or tunnels. A prejob safety conference shall be held with an authorized representative of the division for all underground operations. Representatives of the tunnel or mine owner, the employer, and employees shall be included in the prejob safety conference.

The division shall classify all tunnels or underground mines operating on the effective date of this section, or which commence operation thereafter, as one of the classifications set forth in subdivisions (a) to (d), inclusive. Such classification shall be made prior to the request for bids on all public works projects, whenever possible. This shall not, however, prevent the division from reclassifying such mines or tunnels when conditions warrant it.

(a) Nongassy, which classification shall be applied to tunnels or underground mines where there is little likelihood of encountering gas during the construction of the tunnel or operation of an underground mine. Such tunnels shall be constructed or underground mines operated under regulations,

rules, and orders developed by the division and board and approved by the board. This subdivision shall not prohibit the division chief or his representatives from establishing any special orders that they feel are necessary for safety.

(b) Potentially gassy, which classification shall be applied to tunnels or underground mines where there exists a possibility gas will be encountered.

(c) Gassy, which classification shall be applied to tunnels or underground mines where it is likely gas will be encountered. Special safety measures, including those set forth in Sections 7965 to 7976, inclusive, those established by the division and board and adopted by the board, or special orders written by the chief or his representatives shall be observed in construction of gassy tunnels in addition to regular rules, orders, special orders, or regulations.

(d) Extrahazardous, which classification may, when the division finds that there is a serious danger to the safety of the employees, be applied to tunnels or underground mines where gas or vapors have caused an explosion or fire, where the likelihood of encountering petroleum vapors exists, or where tests show, with normal ventilation, a concentration of hydrocarbon petroleum vapors in excess of 20 percent of the lower explosive limit within three inches of the roof, face, floor, or walls of any open workings. Construction in extrahazardous tunnels or operation in extrahazardous underground mines shall conform to safety measures set forth in Sections 7977 to 7985, inclusive, any rules, regulations, orders, or special orders of the division, or any special rules, orders, or regulations adopted by the board.

The division shall not be required to reclassify any tunnel or underground mine that is shut down seasonally, when such tunnel or underground mine is put back into operation in not less than six months after date of the shutdown.

(Added by Stats. 1972, Ch. 1430.)

7956. All personnel, including both employees working above ground and those in the tunnel or underground mine, shall be informed of the classification designated by the division for that job. A notice of the classification and any special orders, rules, or regulations to be used in construction, remodeling, demolition, or operation of the tunnel or underground mine shall be prominently posted at the site.

(Added by Stats. 1972, Ch. 1430.)

7957. An emergency rescue plan shall be developed by the employer for every tunnel or underground mine. Such plan, including a current map of the tunnel or underground mine, shall be provided to local fire and rescue units, to the division, and to every employee at the place of employment.

(Added by Stats. 1972, Ch. 1430.)

7958. A trained rescue crew of at least five men shall be provided at underground mines with more than 25 men or tunnels with 10 or more men underground at any one time. Smaller mines shall have one man for each 10 men underground who receives annual training in the use of breathing apparatus. Two trained crews shall be provided at mines with more than 50 men underground and at tunnels with more than 25 men underground.

(Added by Stats. 1972, Ch. 1430.)

7959. Rescue crews shall be familiar with all emergency equipment necessary to effect a rescue or search for missing employees in case of an accident or explosion. Such rescue crews shall hold practices with equipment and using emergency rescue plan procedures at least once monthly during construction or operation of the tunnel or underground mines. At least one rescue crew shall be maintained above ground at all times and within 30 minutes travel of the tunnel or underground mine site classified as gassy or extrahazardous.

(Added by Stats. 1972, Ch. 1430.)

7960. In any tunnel or underground mine classified as potentially gassy, tests for gas or vapors shall be made prior to start of work at each shift. If any concentration of gas at or above 10 percent of the lower explosive limit is recorded, the division shall be notified immediately.

(Added by Stats. 1972, Ch. 1430.)

7961. The division shall investigate immediately any notification of a gas reading 10 percent of the lower explosive limit or higher by an employer in a tunnel or underground mine classified as potentially gassy. If the inspection determines the likelihood of encountering more gas or vapor, the division may halt operations until the tunnel or mine can be reclassified.

(Added by Stats. 1972, Ch. 1430.)

7962. A safety representative qualified to recognize hazardous conditions and certified by the division shall be designated by the employer in any tunnel or underground mine. He shall have the authority to correct unsafe conditions and unsafe practices, and shall be responsible for directing the required safety programs.

(Added by Stats. 1972, Ch. 1430.)

7963. All underground mines and tunnels with more than five men underground at one time shall have telephone or other communication systems to the surface in operation at any time there are persons underground. Such systems shall be installed in such a manner that destruction or removal of one phone or communication device does not make other phones or communication devices inoperative.

(Added by Stats. 1972, Ch. 1430.)

7964. Whenever an access shaft is used as the normal means of entrance or exit to an underground mine or tunnel, it shall be constructed of fireproof material or fireproofed by chemical or other means.

(Added by Stats. 1972, Ch. 1430.)

7964.5. Nothing contained in this part shall restrict the division in contracting with the Secretary of the Interior for an approved state plan for mines under P.L. 89-577 (30 U.S.C. 721 et seq.).

(Added by Stats. 1972, Ch. 1430.)

Chapter 2. Gassy and Extrahazardous Tunnels

(Chapter 2 added by Stats. 1972, Ch. 1430.)

7965. Any tunnel or underground mine classified by the division as gassy shall operate under special procedures adopted by the board, as well as rules, regulations, special orders, or general orders for nongassy underground mines and tunnels.

(Added by Stats. 1972, Ch. 1430.)

7966. In any tunnel classified as gassy by the division, there shall be tests for gas or vapors taken prior to each shift and at least hourly during actual operation. If a mechanical excavator is used, gas tests shall be made prior to removal of muck or material and before any cutting or drilling in tunnels or underground mines where explosives are used. A log shall be maintained for inspection by the division showing results of each test. Whenever a tunnel excavation or underground mine operation approaches a geologic formation in which there is a likelihood of encountering gas or water, a probe hole at least 20 feet ahead of the tunnel face or area where material is being mined shall be maintained.

(Added by Stats. 1972, Ch. 1430.)

7967. Whenever gas levels in excess of 10 percent of the lower explosive limit are encountered initially in a tunnel or underground mine classified as gassy, the division shall be notified immediately by telephone or telegraph. The chief of the division or his authorized representative may waive subsequent notification for gas readings less than 20 percent of the lower explosive limits upon a finding that adequate ventilation and other safety measures are provided to assure employee safety.

(Added by Stats. 1972, Ch. 1430.)

7968. In any gassy tunnel or underground mine, the division may order work halted until adequate testing can be completed to determine the level of hazard from gases or vapors. A notice of such shutdown shall be filed by the division inspector with his superiors as soon as practicable. Any overruling of such order must be made by the chief or his designated representative and must be in writing. An onsite inspection must be made by the person overruling an inspector's order prior to resumption of work.

(Added by Stats. 1972, Ch. 1430.)

7969. In any gassy tunnel or underground mine the division shall review plans for electrical lighting and power for equipment. When it is necessary for safety, the inspector may require changes in the amount and type of lighting, and may require permissive-type wiring, switches, tools, and equipment.

(Added by Stats. 1972, Ch. 1430.)

7970. In any tunnel or underground mine classified gassy, smoking shall be prohibited and the employer shall be responsible for collecting all personal sources of ignition such as lighters and matches from employees entering the tunnel.

(Added by Stats. 1972, Ch. 1430.)

7971. Whenever there is any ignition of gas or vapor in a tunnel or underground mine, all work shall cease, employees shall be removed, and reentry except for rescue purposes shall be prohibited until the division has conducted an inspection and authorized reentry for maintenance or production in writing.

(Added by Stats. 1972, Ch. 1430.)

7972. If the level of gas in any tunnel or underground mine reaches 20 percent of its lower explosive limit at any time all men shall be removed, the division notified immediately by telephone or telegram, and no one shall reenter the tunnel or underground mine until approval is given by the division.

(Added by Stats. 1972, Ch. 1430.)

7973. In any tunnel or underground mine classified as gassy, all employees shall be informed of any special orders made by the division following an inspection. Such notice shall be given before entering the tunnel or underground mine. A copy of any orders subsequently written by the division shall be posted and all employees shall be notified at a safety meeting called by the safety representative before they are permitted to start work.

(Added by Stats. 1972, Ch. 1430.)

7974. In any tunnel classified as gassy by the division, ventilation shall include continuous exhausting of fumes and air, unless an alternative ventilation plan which is as effective or better is approved by the division. Fans for this purpose shall be located at the surface, and shall be reversible from a single switch at the portal or shaft. These requirements shall not preclude the use of auxiliary fans to supply more air or greater exhaust to a tunnel or underground mine.

(Added by Stats. 1972, Ch. 1430.)

7975. A "kill" button capable of cutting off all electrical equipment shall be maintained in any gassy tunnel or underground mine. The safety representative or his designated representative shall cut off power at any time gas or vapor levels reach 20 percent of the lower explosive limit or more. Before work is restarted every employee underground shall be informed of the level of gas or vapor recorded, and a permanent record shall be called to the surface and retained in a special log.

(Added by Stats. 1972, Ch. 1430.)

7976. In any tunnel or underground mine classified as gassy, the division shall determine the number of fire extinguishers necessary and their locations.

(Added by Stats. 1972, Ch. 1430.)

7977. Any tunnel or underground mine classified as extrahazardous by the division shall comply with the provisions for gassy tunnels in this chapter, as well as regulations, rules, special orders, and general orders of the division or board.

(Added by Stats. 1972, Ch. 1430.)

7978. In any extrahazardous tunnel or underground mine smoking by employees or open flame shall be prohibited. Welding or cutting with arc or flame underground in other than fresh air shall be done under the direct supervision of qualified persons who shall test for gas and vapors before welding or cutting starts and continuously during such an operation. No cutting or welding shall be permitted in atmospheres where any concentration of gas or vapor reaches 20 percent of the lower explosive limit or more while a probe hole is being drilled or when the tunnel face or material from a mine is being excavated.

(Added by Stats. 1972, Ch. 1430.)

7979. In tunnels or underground mines classified extrahazardous, sufficient air shall be supplied to maintain an atmosphere of all of the following conditions:

(a) Not less than 19 percent oxygen.

(b) Not more than 0.5 percent carbon dioxide.

(c) Not more than 5 parts per million nitrogen dioxide.

(d) No petroleum vapors or other toxic gases in concentrations exceeding the threshold limit values established annually by the American Conference of Governmental Industrial Hygienists.

(Added by Stats. 1972, Ch. 1430.)

7980. All electrical equipment and machines, including diesel engines, used in tunnels or underground mines classified extrahazardous shall be permissible equipment. The division may, however, permit the use of nonpermissive equipment in a tunnel or underground mine in areas where it finds there is no longer danger from gas or other hazards.

(Added by Stats. 1972, Ch. 1430.)

7981. An escape chamber or alternate escape route shall be maintained within 5,000 feet of the tunnel face or areas being used to excavate material in an underground mine classified as gassy or extrahazardous. Workers shall be provided with emergency rescue equipment and trained in its use.

(Added by Stats. 1972, Ch. 1430.)

7982. Records of air flow and air sample tests to assure compliance with required standards shall be maintained by the employer at the site of any tunnel or underground mine classified extrahazardous. Such records shall be made available to any division representative upon request.

(Added by Stats. 1972, Ch. 1430.)

7983. The main fan line used for ventilation in any tunnel or underground mine classified extrahazardous shall contain a cutoff switch capable of halting all machinery underground automatically should the fan fail or its performance fall below minimum power needed to maintain a safe atmosphere.

(Added by Stats. 1972, Ch. 1430.)

7984. In any tunnel or underground mine classified extrahazardous a device or devices which automatically and continuously test the atmosphere for gases or vapors shall be maintained. Such device or devices shall be placed as near the face or area of operation as practical, but never more than 50 feet from such point. The division shall determine if additional monitors are necessary and where they should be located. This requirement shall apply only to tunnels or underground mines where excavation of material is by mechanical means.

(Added by Stats. 1972, Ch. 1430.)

7985. All such testing device or devices shall be U.S. Bureau of Mines approved or acceptable to other authorities recognized by the division and shall automatically sound an alarm and activate flashing red signals visible to employees underground whenever the concentration of gases or vapors reaches or exceeds permissible levels. Permissible levels may be established lower than the limits set in division rules, regulations, or general orders whenever a division inspector considers such action necessary to make the operation safe for employees.

(Added by Stats. 1972, Ch. 1430.)

Chapter 3. Licensing and Penalties

(Chapter 3 added by Stats. 1972, Ch. 1430.)

7990. In any tunnel or mine under jurisdiction of the division, the use of explosives shall be limited to persons licensed by the division.

(Added by Stats. 1972, Ch. 1430.)

7991. (a) To obtain a license under Section 7990, and to renew that license, a person shall pass an oral and written examination given by the division. The division shall offer the examination in Spanish, or any other language, when requested by the applicant. The division shall administer an examination orally when requested by an applicant who cannot write. Licenses shall be renewable every five years.

(b) The division shall set a nonrefundable fee for processing applications for licenses required by Section 7990 and a fee for administering examinations under this section. In fixing the amount of these fees, the division may include direct costs and a reasonable percentage attributable to the indirect costs of the division for administering this chapter. Those fees shall be deposited into the Occupational Safety and Health Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 226. Effective June 27, 2016.)

7992. The board shall determine qualifications for persons seeking an "explosive blaster's license" and rules and regulations for use of explosives in tunnels or mines.

(Added by Stats. 1972, Ch. 1430.)

7993. Any person holding an "explosive blaster's license" who is convicted of violating any safety order involving the use or handling of explosives shall have his license suspended for not less than 30 days upon hearing by the division, in addition to any other penalties he may be assessed.

(Added by Stats. 1972, Ch. 1430.)

7994. Any person holding an "explosive blaster's license" who is convicted of violating safety orders involving use or handling of explosives in which the violation is judged to be responsible for an accident involving serious injury or death shall have his or her license revoked for at least one year, in addition to any other penalties he or she may be assessed. Any person who has had his or her "explosive blaster's license" revoked may apply for a new license after the minimum period of revocation expires. He or she shall be required to pass all examinations before a new license is granted.

(Amended by Stats. 2006, Ch. 538, Sec. 495. Effective January 1, 2007.)

7995. Any person who has had his "explosive blaster's license" revoked who is subsequently convicted of violations of a safety order involving the use or handling of explosives shall have his license permanently revoked in addition to other penalties he may be assessed.

(Added by Stats. 1972, Ch. 1430.)

7996. All safety equipment required to provide safe employment in tunnels or underground mines shall be U.S. Bureau of Mines approved, or acceptable to other authorities recognized by the division, and acceptable by the division.

(Added by Stats. 1972, Ch. 1430.)

7997. The board shall review and update general orders for tunnels and mines at least every two years. Representatives of the unit inspecting tunnels and mines shall be consulted during each review and shall be permitted to submit suggested changes to the general orders at any time.

(Added by Stats. 1972, Ch. 1430.)

7998. The division shall also develop tests, available in English, Spanish, or other languages where a sufficient portion of employees exists to show need, to qualify gas testers and safety representatives in tunnels and mines.

(Amended by Stats. 1974, Ch. 1284.)

7999. No person shall be qualified to operate as a gas tester, or serve as a safety representative in a tunnel or underground mine unless he holds a certificate issued by the division. No certificate may be issued or renewed unless the applicant or licensee, as the case may be, has passed an examination given by the division.

(Amended by Stats. 1974, Ch. 1284.)

8000. Requirements established by the board shall preempt local government rules, regulations, and laws requiring certification or licensing as gas testers or safety representatives. However, local governments may contract with the division for testing applicants and issuing certifications.

(Added by Stats. 1972, Ch. 1430.)

8001. The division shall charge a fee sufficient to cover the direct and indirect costs of the division to administer the examination and certification of gas testers and safety representatives for tunnels and mines. Renewals shall be made every five years.

(Amended by Stats. 2016, Ch. 31, Sec. 227. Effective June 27, 2016.)

8002. All fees from applications shall be nonrefundable. Those fees shall be deposited into the Occupational Safety and Health Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 228. Effective June 27, 2016.)

8003. Violation of regulations, rules, orders, or special orders adopted by the board or division as a condition of certification shall be punishable by suspension or revocation of certification, unless such violation is responsible for death or injury to employees, in which case it shall be punishable as a misdemeanor.

(Added by Stats. 1972, Ch. 1430.)

8004. The provisions of this part shall not apply to the normal operation, maintenance, or repair of any completed tunnels owned or operated by a utility as defined in Section 229 of the Public Utilities Code. However, it shall apply to the initial construction or substantial modification of such a tunnel.

(Added by Stats. 1972, Ch. 1430.)

Part 10. Use Of Carcinogens

(Part 10 added by Stats. 1985, Ch. 947, Sec. 2.)

Chapter 1. General Provisions and Definitions

(Chapter 1 added by Stats. 1985, Ch. 947, Sec. 2.)

9000. This part shall be known and may be cited as the Occupational Carcinogens Control Act of 1976.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9001. The purpose of this part is to clarify and strengthen the provisions of state law applicable to the use of carcinogens in California. It is the intent of the Legislature to provide for effective implementation of the provisions of this part.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9002. The following definitions shall govern the construction of this part. Additionally, except where the context otherwise requires, the definitions contained in Part 1 (commencing with Section 6300) shall also be applicable to this part.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9003. "Affected employee" means an employee who, as part of his or her employment, is involved in the use of a carcinogen, or an employee with respect to whom there is a substantial probability that he or she will become so involved as the result of his or her employer's use of a carcinogen.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9004. "Carcinogen" means and includes the following recognized cancer-causing substances for which standards have been adopted pursuant to Chapter 3 (commencing with Section 9020):

(a) Any of the following substances and any compound, mixture, or product containing these substances:

(1) 2-acetylaminofluorene.

(2) 4-aminodiphenyl.

(3) Benzidine and its salts.

(4) Bis(chloromethyl) ether.

(5) 3,3´-dichlorobenzidine and its salts.

(6) 4-dimethylaminoazobenzene.

(7) Beta-naphthylamine.

(8) 4-nitrodiphenyl.

(9) N-nitrosodimethylamine.

(10) Beta-propriolactone.

(11) Methyl chloromethyl ether.

(12) Alpha-naphthylamine.

(13) 4,4´-methylene-(bis)2-chloroaniline.

(14) Ethyleneimine.

(b) Asbestos, including chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(c) Vinyl chloride.

(d) Any other substance for which standards are adopted and in effect due to cancer-causing properties and any compound, mixture, or product containing such a substance, except as specifically exempted from the standards.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9005. "Division" means the Division of Occupational Safety and Health.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9006. "Employer" means any of the following:

(a) The state and every state agency.

(b) Each county, city, district, and all public and quasi-public corporations and public agencies therein.

(c) Every person, including any public service corporation, which has any natural person in service.

(d) The legal representative of any deceased employer.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9007. "Standards" means standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of Division 1.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9008. "Standards board" means the Occupational Safety and Health Standards Board.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9009. "Use" means any use of a carcinogen by an employer, including, but not limited to, the following:

(a) Manufacture of a carcinogen, industrial uses thereof, or formation of a carcinogen as a result of a chemical reaction.

(b) Sale or other transfer of a carcinogen.

(c) Storage or disposal of a carcinogen.

(d) Utilization of a carcinogen for research.

(e) Transport of a carcinogen. The State Department of Health Services and the division shall have concurrent jurisdiction with any federal agency to protect affected employees of interstate carriers, including rail carriers, while in this state, as provided in this part or as authorized by other provisions of state law.

(Added by Stats. 1985, Ch. 947, Sec. 2. Note: See this section as modified on July 17, 1991, by Governor's Reorganization Plan No. 1 of 1991.)

Chapter 2. Exemptions

(Chapter 2 added by Stats. 1985, Ch. 947, Sec. 2.)

9015. Except where in conflict with Section 142.3, or other applicable provisions of law, the standards board may exempt from the provisions of this part and its standards uses of carcinogens which it determines have been shown by a preponderance of the evidence to present no substantial threat to employee health and which may include, but need not be limited to, any of the following:

(a) Use of carcinogens specified in subdivision (a) of Section 9004 in operations involving the destructive distillation of carbonaceous materials, such as occurs in coke ovens.

(b) Use of asbestos, except where there is a material risk of substantial and repeated exposure of employees to this carcinogen.

Except as provided in Section 18930 of the Health and Safety Code, the standards board shall adopt regulations for the implementation of the provisions of this section.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

Chapter 3. Standards and Administration

(Chapter 3 added by Stats. 1985, Ch. 947, Sec. 2.)

9020. (a) Pursuant to Chapter 6 (commencing with Section 140) of Division 1, the standards board shall adopt standards for carcinogens at least as restrictive as the federal requirements for use of carcinogens promulgated under Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596), as these federal requirements may be revised from time to time. Within six months after the effective date of any change in the federal requirements, the standards board shall amend its standards as necessary to comply with this subdivision.

(b) It is the intent of the Legislature that the state shall exercise strong leadership in preventing employees, employers, and other persons from being exposed to carcinogens. In this connection, it is the further intent of the Legislature that the standards board adopt standards for substances as to which there exists

a preponderance of evidence of carcinogenicity, but for which the federal government has not yet promulgated requirements specified in subdivision (a). The division shall determine the necessity for the standards and shall develop and present the proposed standards to the standards board pursuant to Section 147.1.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9021. All standards relating to the use of carcinogens which are in effect on January 1, 1986, including standards set forth in Sections 5208, 5209, and 5210 of Title 8 of the California Administrative Code, shall remain in effect until amended or repealed by the standards board.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9021.5. (a) Not later than January 1, 1987, the Division of Occupational Safety and Health shall propose a regulation concerning asbestos-related work, as defined in Section 6501.8, to the Occupational Safety and Health Standards Board for review and adoption so as to protect most effectively the health and safety of employees. The regulation shall also include, but not be limited to, specific work practices and specific requirements for certification of all employees engaged in asbestos-related work.

(b) (1) Not later than July 1, 1991, the Division of Occupational Safety and Health shall propose regulations for the certification of asbestos consultants and site surveillance technicians to the Occupational Safety and Health Standards Board for consideration and action. By January 1, 1992, the board shall adopt regulations regarding certification. The regulations shall address and encompass procedures to determine the requirements for the certification provided for by Article 11 (commencing with Section 7180) of Chapter 9 of Division 3 of the Business and Professions Code. The division shall prepare and administer an examination to determine qualifications for certification pursuant to subdivision (b) of Section 7184 and subdivision (c) of Section 7185 of the Business and Professions Code. The examination shall be administered on a periodic, regularly scheduled basis.

(2) The division may, in lieu of preparing and administering its own certification examination, approve one or more public or private institutions which offer programs in asbestos abatement training to prepare and administer the examination described in subdivision (b) of Section 7184 and subdivision (c) of Section 7185 of the Business and Professions Code. However, the division shall not approve any institution, organization, individual, or other entity for administering a certification examination if that institution, organization, individual or other entity engages, for compensation, in any aspect of asbestos abatement work. For purposes of developing or approving a certification examination pursuant to this section, the division shall consult with an advisory committee of individuals who have academic and professional experience in asbestos abatement work, including a certified industrial hygienist, representatives of asbestos abatement workers, and asbestos abatement contractors.

(c) This section does not exempt any employer from complying with the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of this code) and regulations adopted thereunder, nor does it exempt any employer from complying with Section 5208 of Title 8 of the California Administrative Code. For products not requiring contractor certification pursuant to subdivision (a) of Section 7058.5 of the Business and Professions Code, training and certification of employees shall be done by the employer.

(Amended by Stats. 1990, Ch. 1255, Sec. 2.)

9021.6. (a) The division shall charge a fee to each asbestos consultant and site surveillance technician who applies for certification pursuant to subdivision (b) of Section 9021.5 and Article 11 (commencing with Section 7180) of Chapter 9 of Division 3 of the Business and Professions Code. The fee shall be sufficient to cover the direct and indirect costs to the division for administering the certification process, including preparation and administration of the examination. The fees collected shall be deposited in the Occupational Safety and Health Fund. Establishment of any fee pursuant to this section shall be accomplished through the regulatory process required by subdivision (b) of Section 9021.5.

(b) On the effective date of the measure adding this subdivision, any moneys in the Asbestos Training and Consultant Certification Fund and any assets, liabilities, revenues, expenditures, and encumbrances of that fund shall be transferred to the Occupational Safety and Health Fund.

(Amended by Stats. 2016, Ch. 31, Sec. 229. Effective June 27, 2016.)

9021.8. All asbestos consultant and site surveillance technician certifications shall be renewed annually. The division shall require asbestos consultants and site surveillance technicians to complete the annual refresher courses as required under the Asbestos Hazard Emergency Response Act (Subchapter II (commencing with Section 2641) of Chapter 53 of Title 15 of the United States Code) or the equivalent, as determined by the division.

(Added by Stats. 1990, Ch. 1255, Sec. 5.)

9021.9. (a) The division shall establish an advisory committee to develop and recommend by September 30, 1994, for action by the standards board in accordance with Section 142.3, specific requirements for hands-on, task-specific training programs for all craft employees who may be exposed to asbestos-containing construction materials and all employees and supervisors involved in operations pertaining to asbestos cement pipe, as specified in subdivision (c) of Section 6501.8. The training programs shall include, but not be limited to, the following information:

(1) The physical characteristics and health hazards of asbestos.

(2) The types of asbestos cement pipe or asbestos-containing construction materials an employee may encounter in his or her specific work assignments.

(3) Safe practices and procedures for minimizing asbestos exposures from operations involving asbestos cement pipe or asbestos-containing construction materials.

(4) A review of general industry and construction safety orders relating to asbestos exposure.

(5) Hands-on instruction using pipe or other construction materials and the tools and equipment employees will use in the workplace.

(b) The division shall approve training entities to conduct task-specific training programs that include the requirements prescribed by the standards board pursuant to this section for employees and supervisors involved in operations pertaining to asbestos cement pipe or asbestos-containing construction materials.

(c) The division shall charge a fee to each asbestos training entity approved by the division pursuant to subdivision (b). The fee shall be sufficient to cover the division's direct and indirect costs for administering the approval process provided for in subdivision (b). The fees collected shall be deposited in the Occupational Safety and Health Fund. Establishment of any

fee pursuant to this section shall be accomplished through the regulatory process required by subdivision (b) of Section 9021.5.

(Amended by Stats. 2016, Ch. 31, Sec. 231. Effective June 27, 2016.)

9022. The division shall have primary responsibility for enforcement of standards relating to carcinogens. However, the State Department of Health Services shall assist the division in the enforcement of the standards, in the manner prescribed by this chapter, and as shall be further defined by a written agreement between the State Department of Health Services and the department, pursuant to Section 144.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

Chapter 4. Reporting

(Chapter 4 added by Stats. 1985, Ch. 947, Sec. 2.)

9030. The standards board shall adopt one or more standards requiring each employer which uses any carcinogen, including asbestos and vinyl chloride, to submit a written report regarding the use or any incident which results in the release of a potentially hazardous amount of a carcinogen into any area where employees may be exposed. The reporting requirements set forth in Sections 5209 and 5210 of Title 8 of the California Administrative Code on January 1, 1986, shall remain in effect until amended or repealed by the standards board, and any subsequent reporting requirements shall provide for reports which are at least as detailed as those required on that date. For asbestos and vinyl chloride, the standards board shall adopt a standard which requires each employer who uses vinyl chloride or asbestos to report in a manner similar to the reporting required pursuant to Section 5209 of Title 8 of the California Administrative Code.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9031. The division shall transmit a copy of each report specified in Section 9030 to any bargaining representatives, and other representatives known to the division, of affected employees of the reporting employer. A copy of each report shall be posted by the employer in the location or locations where the carcinogen is used, which shall be conspicuous to affected employees, as shall be provided in the standards.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9032. The division shall make every effort to ascertain the identities of existing users of carcinogens and to notify, inform, and educate them about the requirements of this part. The division shall utilize all appropriate means of communication and education, including direct mailings to employers, the use of courses, workshops, and seminars, advertising in mass media, trade and employee publications, and professional and scientific journals, contact with trade associations, employee representatives, and professional and scientific societies, and cooperation with other governmental agencies to inform affected employees, employers, and the public of the requirements of this part.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

Chapter 5. Medical Examinations

(Chapter 5 added by Stats. 1985, Ch. 947, Sec. 2.)

9040. Every employer using carcinogens shall provide for medical examinations of affected employees where required by standards adopted pursuant to subdivision (b) of Section 142.3. The standards board shall continue to require medical examinations in at least as effective a manner as provided in Sections 5208, 5209, and 5210 of Title 8 of the California Administrative Code on January 1, 1986.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

Chapter 6. Inspections

(Chapter 6 added by Stats. 1985, Ch. 947, Sec. 2.)

9050. The division shall establish priorities for the performance of inspections of premises for which uses have been reported pursuant to Section 9030 and shall perform as many of these inspections as possible within the limits of the resources available to it for that purpose.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9051. If an authorized representative of the division determines on the basis of an inspection that an employer is using a carcinogen in violation of the standards pertaining to its use, he or she shall immediately notify the employer and affected employees.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9052. Upon request of any employer or any employee, or upon its own initiative, the OSHA Consultation Unit of the department shall provide consultation services regarding the use of a carcinogen and may offer educational programs to inform employers and employees of the provisions of this part.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

Chapter 7. Penalties

(Chapter 7 added by Stats. 1985, Ch. 947, Sec. 2.)

9060. The civil penalties prescribed by Chapter 4 (commencing with Section 6423) of Part 1 shall be applicable to violations of standards and special orders regulating the use of carcinogens, except as modified by the following:

(a) A civil penalty assessed against an employer because of failure to report, as required by standards specified in Section 9030, shall be not less than five hundred dollars ($500).

(b) A civil penalty assessed against an employer for a serious violation, as defined in Section 9061, involving use of a carcinogen in violation of standards or special orders, except as provided by subdivision (d) and by Section 6429, shall be in the amount of two thousand dollars ($2,000).

(c) A civil penalty assessed pursuant to Section 6429 for repeated violations of standards or special orders specified in subdivision (a) shall be not less than five thousand dollars ($5,000).

(d) A civil penalty assessed pursuant to Section 6429 for repeated serious violations of standards or special orders specified in subdivision (b) shall be not less than ten thousand dollars ($10,000).

The maximum limitations on civil penalties specified in Chapter 4 (commencing with Section 6423) of Part 1 shall be applicable to civil penalties for which the minimum amount is prescribed by subdivision (a), (c), or (d). Nothing in this section shall supersede any provision of law prescribing criminal offenses or penalties.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

9061. (a) For purposes of this part, "serious violation" shall have the meaning specified in Section 6432 and, except as provided in subdivision (b), shall additionally include any violation of a standard or special order respecting the use of a carcinogen.

(b) A violation of a standard or special order respecting the use of a carcinogen shall not, be a "serious violation" if the employer did not, and could not, with the exercise of reasonable diligence, know of the presence of the violation or if the violation is minor and resulted in no substantial health hazard, as determined by the division.

(Added by Stats. 1985, Ch. 947, Sec. 2.)

Part 11. Commercial Establishments

(Part 11 added by Stats. 2001, Ch. 856, Sec. 1.)

Chapter 1. Working Warehouses

(Chapter 1 added by Stats. 2001, Ch. 856, Sec. 1.)

9100. For purposes of this chapter, "sales floor" means any area where the public is invited to shop, whether indoors or outdoors.

(Added by Stats. 2001, Ch. 856, Sec. 1. Effective January 1, 2002.)

9101. For purposes of this chapter, "working warehouse" means a wholesale or retail establishment in which both of the following occur:

(a) Heavy machinery, including, but not limited to, forklifts, is used in any area where the public shops while customers are on the premises.

(b) Merchandise is stored on shelves higher than 12 feet above the sales floor.

(Added by Stats. 2001, Ch. 856, Sec. 1. Effective January 1, 2002.)

9102. (a) The owner, manager, or operator of a working warehouse shall secure merchandise stored on shelves higher than 12 feet above the sales floor. Methods of securing merchandise shall include rails, fencing, netting, security doors, gates, cables, or the binding of items on a pallet into one unit by shrink-wrapping, metal or plastic banding, or by tying items together with a cord.

(b) All working warehouses shall comply with the provisions of this section on or before July 1, 2002.

(Amended by Stats. 2002, Ch. 664, Sec. 166. Effective January 1, 2003.)

9103. (a) When heavy machinery is used to move merchandise from a shelf, there shall be a safety zone established to temporarily block customers from entering areas where merchandise could fall during removal from a shelf.

(b) All working warehouses shall comply with the provisions of this section on or before July 1, 2002.

(Amended by Stats. 2002, Ch. 664, Sec. 167. Effective January 1, 2003.)

9104. An owner, manager, or operator of a working warehouse who employs more than 50 employees shall submit to the division, a report of all known injuries requiring hospitalization, including emergency room medical treatment, or deaths occurring to customers as the result of falling merchandise. The report shall be filed within 30 days of December 31, 2002, and within 30 days of December 31, 2003. Each year, a corporation owning, managing, or operating more than one working warehouse may submit a single report on behalf of all of the corporation's working warehouses in the state, provided that the report identifies the location of the warehouse where each reportable incident occurred.

(Added by Stats. 2001, Ch. 856, Sec. 1. Effective January 1, 2002.)